

COMMONWEALTH OF MASSACHUSETTS

Appeals Court

No. 2021-P-0493

SUFFOLK COUNTY

KATHLEEN TRAHAN,
PLAINTIFF.

v.

STANLEY T. PELCZAR,
DEFENDANT.

v.

NANCY FRATTAROLI,
REACH & APPLY DEFENDANT

ON APPEAL FROM A JUDGMENT IN THE
MIDDLESEX SUPERIOR COURT

**PLAINTIFF'S APPELLATE RULE 11
APPLICATION FOR DIRECT APPELLATE REVIEW**

INTRODUCTION

On January 5, 2022, this Court heard arguments in Bassichis v. Flores, SJC No. 13175. The Justices considered the scope of the absolute litigation privilege and the limits of its applicability to words and/or actions by counsel. Due to the pendency of a similar issue in Trahan v. Pelczar, Appeals Court

Docket No. 2021-P-0493, following an invitation for submission of amicus briefs, Steven E. Kramer submitted a brief and then viewed the hearing on January 5.

Justices Kafker and Wendlandt frequently questioned counsel and commented on the lack of a definitive standard of the limits of the privilege. In particular, the Justices expressed concern that the privilege seems to insulate counsel who commits the equivalent of an abuse of process or an unfair and deceptive act or practice. The Court commented that the issue presents a novel, public interest concern.

Trahan v. Pelczar has been pending in the Appeals Court since September, 2021 and has been fully briefed by the parties. However, a primary appellate claim is Plaintiff's allegation that opposing counsel engaged in a deliberate unfair and deceptive scheme to utilize the discovery process to extend the case and deny Plaintiff most of the damages she could recover from the Reach and Apply Defendant. The case is a simple collection case and the Lower Court has found that the Defendant defaulted on every payment owed to Plaintiff over a six-year period with no substantive defense for nonpayment.

Opposing counsel insisted at the outset that substantial discovery would be required, then failed to propound any within the mandatory time standards period. He followed this with a series of requests for depositions and other discovery extending

over 18 months beyond the deadline without demonstrating any good cause for the delay and the lower court seriously abused its discretion by enabling him to do so. This allowed Counsel and his client, without any substantive defense to his six years of defaults, to receive the entire \$13,194.64 monthly payment due from the reach and apply defendant during most of the litigation. It represents a classic abuse of process and unfair and deceptive practice by utilizing process for an ulterior motive. These actions should not be protected by the privilege and should make him accountable to the opposing party under c. 93A.

Trahan moved to amend her complaint in the lower court to include a 93A claim against opposing counsel but the Lower Court denied the request based on the privilege. Opposing counsel's motivation at all times was to limit the availability of the monthly payments of \$13,194.64 he received from the Reach and Apply Defendant while failing to provide any substantive defense to her claims upon which he defaulted.

As a result, the Trahan case is ripe for adjudication on the same question as in Flores, *supra* where the limits of the absolute litigation privilege are to be determined.

Numerous other appellate issues and claims are pending in Trahan, many of which reflect the lower court's egregious enabling of opposing counsel's scheme and the punitive rulings imposed against Plaintiff for seeking to arrest the process. However, the

adjudication of the absolute litigation privilege, as it applies to opposing counsel, is the primary issue that perpetuated the process. The scope of the privilege was of obvious concern to the panel during the Flores hearing. Trahan incorporated several federal appellate cases in her appellate and amicus brief and relevant portions are attached hereto.

FORMAL APPLICATION

1. Plaintiff seeks direct appellate review of the pending action in Docket No. 2021-P-0493, including the Lower Court's denial of her Motion to Amend her complaint to include a c. 93A claim against opposing counsel.

2. The underlying complaint was filed in August 2017 in Middlesex Superior Court and the docket entries are attached. The matter began as simple collection proceeding by Trahan against Pelczar for breach of contract of a settlement agreement between the parties from a prior business enterprise. The lower court found that Pelczar has failed to make any of his required payments under the agreement since 2015. A judgment was rendered on Trahan's behalf in 2020 but numerous issues and disputes are pending on appeal, including damages, attorneys' fees and discovery delays and orders that resulted from the scheme promoted by opposing counsel that was perpetuated by numerous rulings that constitute an egregious abuse of discretion.

3. Despite these other issues, the primary claim and precipitant of Trahan's appeal is whether opposing counsel should be held responsible for the substantial damages she has incurred. These resulted from opposing counsel's consistent pattern of extending the proceedings solely to enable him and his client to collect substantial reach and apply monthly payments and, in the meantime, pay Trahan nothing. His actions were not in the scope of providing a litigation defense but rather were an abuse of process to fraudulently ensure her remedies would be eliminated

4. The issue of the absolute litigation privilege, as applied to counsel, was addressed when Plaintiff moved to amend her complaint to include the c. 93A claim against counsel. Counsel had no viable defense to his client's failure to make required payments since 2015. Yet, through discovery demands not initiated until after the tracking order deadline, with no good cause shown for delay, he extended the process and thereby substantially reduced Trahan's remedies. In Shirokov v. Dunlap Grubband and Weaver (CA-10-12043-GAO (D) Mass. 2012) and St. Paul Fire Insurance v. Ellis & Ellis, 262 Fed. 3rd, 53, 1st Cir. 2011, the Federal Court upheld c. 93A liability on opposing counsel for similar unfair and deceptive acts and practices based upon the "scheme" and "veneer of legitimacy" they created in "trade or commerce".

5. The specific arguments Plaintiff has provided in support of her claims are included in the respective sections of Trahan's appellate and amicus briefs attached to this Application. The lower court denial is also attached. The matter is currently expected to be scheduled for argument in the Appeals Court in Spring, 2022.

Respectfully submitted,
Plaintiff,
By her Attorney,

/s/ Steven E. Kramer

STEVEN E. KRAMER,
BBO #279080
58 Polaris Drive
Mashpee, MA 02649
774-254-0772
sekramer8@aol.com

DATED: January 7, 2022

CERTIFICATE OF COMPLIANCE

I, Steven E. Kramer, hereby certify, pursuant to M.R.A.P. Rule 16(k), that this Application complies with applicable rules of court, including, but not limited to, M.R.A.P. Rules 16(a)(6), 16(f), 16(h), 18 and 20.

/s/ Steven E. Kramer

STEVEN E. KRAMER

CERTIFICATE OF SERVICE

I, Steven E. Kramer, hereby certify that I have this 7th day of January, 2022, served a copy of the foregoing on Ronald Dunbar, Esq. counsel for the Defendant at 197 Portland St. Boston MA.

/s/ Steven E. Kramer

STEVEN E. KRAMER

1781CV02356 Trahan, Kathleen vs. Pelczar, Stanley J

- Case Type:
- Contract / Business Cases
- Case Status:
- Open
- File Date
- 08/07/2017
- DCM Track:
- F - Fast Track
- Initiating Action:
- Other Contract Action
- Status Date:
- 08/07/2017
- Case Judge:
- Barry-Smith, Hon. Christopher K
- Next Event:

[All Information](#) [Party](#) [Judgment](#) [Subsequent Action/Subject](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#) |

Party Information

Trahan, Kathleen
- Plaintiff

Alias

Party Attorney

- Attorney
- Kramer, Esq., Steven E
- Bar Code
- 279080
- Address
- Steve Kramer
- 58 Polaris Drive
- Mashpee, MA 02649
- Phone Number
- (774)254-0772

[More Party Information](#)

Pelczar, Stanley J
- Defendant

Alias

Party Attorney

- Attorney
- Dunbar, Jr., Esq., Ronald W
- Bar Code
- 567023
- Address
- Dunbar Law PC
- 197 Portland St 5th Floor
- Boston, MA 02114
- Phone Number
- (617)244-3550

[More Party Information](#)

Law Office of Rosemary Purtell, LLC
- Defendant-Intervenor

Alias

Party Attorney

- Attorney
- Lara, Esq., Nicole M
- Bar Code
- 688612
- Address
- 388 LLC
- 388 East 8th St
- Boston, MA 02127
- Phone Number
- (617)268-0388

[More Party Information](#)

Pelczar, Nancy F

- Reach & Apply Defendant

Alias

Party Attorney

[More Party Information](#)**Judgments**

<u>Date</u>	<u>Type</u>	<u>Method</u>	<u>For</u>	<u>Against</u>
09/16/2020	Summary Judgment MRCP 56	After Judicial Finding	Trahan, Kathleen	Pelczar, Stanley J

Subsequent Action/Subject

<u>Description</u>	<u>Status</u>	<u>SA/Subject #</u>	<u>Pleading Party</u>	<u>Responding Party</u>	<u>Judgments</u>	<u>Status Date</u>
Counterclaim	Filed	1	Pelczar, Stanley J	Trahan, Kathleen	0	09/18/2017

Events





<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
08/17/2017 02:00 PM	Civil J Rm 520	Courtroom 420	Hearing on Preliminary Injunction	Kirpalani, Hon. Maynard	Held as Scheduled
08/17/2017 02:00 PM	Civil L2 CR16	Courtroom 740	Hearing on Preliminary Injunction	Inge, Hon. Garry V	Rescheduled
09/08/2017 11:00 AM	Civil L2 CR16	Courtroom 740	Hearing on Equity Issue	Inge, Hon. Garry V	Held as Scheduled
11/06/2017 02:00 PM	Civil L2 CR16	Courtroom 740	Motion Hearing	Inge, Hon. Garry V	Held - Under advisement
02/13/2018 02:00 PM	Civil L2 CR16	Courtroom 740	Rule 56 Hearing	Inge, Hon. Garry V	Held as Scheduled
06/12/2018 02:00 PM	Civil L2 CR16	Courtroom 740	Motion Hearing	Inge, Hon. Garry V	Held as Scheduled
09/05/2018 02:00 PM	Civil L2 CR16	Courtroom 740	Rule 56 Hearing	Kazanjan, Hon. Helene	Rescheduled
09/05/2018 02:00 PM	Civil C Rm 740	Courtroom 610	Rule 56 Hearing	Barry-Smith, Hon. Christopher K	Held as Scheduled
09/17/2018 02:00 PM	Civil C Rm 740	Courtroom 610	Motion Hearing	Barry-Smith, Hon. Christopher K	Held as Scheduled
09/17/2018 02:00 PM	Civil C Rm 740	Courtroom 610	Conference to Review Status	Barry-Smith, Hon. Christopher K	Held as Scheduled
10/16/2018 02:00 PM	Civil C Rm 740	Courtroom 610	Hearing for Protective Order	Barry-Smith, Hon. Christopher K	Held as Scheduled
11/13/2018 02:00 PM	Civil L2 CR16	Courtroom 740	Rule 56 Hearing	Kazanjan, Hon. Helene	Rescheduled
12/11/2018 02:00 PM	Civil C Rm 740	Courtroom 610	Motion Hearing	Barry-Smith, Hon. Christopher K	Held as Scheduled
12/17/2018 02:00 PM	Civil C Rm 740	Courtroom 610	Rule 56 Hearing	Barry-Smith, Hon. Christopher K	Rescheduled
12/18/2018 02:00 PM	Civil C Rm 740	Courtroom 610	Rule 56 Hearing	Barry-Smith, Hon. Christopher K	Held as Scheduled
03/05/2019 03:00 PM	Civil B Rm 720	Courtroom 720	Status Review	Barry-Smith, Hon. Christopher K	Held as Scheduled
09/04/2019 02:00 PM	Civil C Rm 740	Courtroom 610	Motion Hearing	Barry-Smith, Hon. Christopher K	Held as Scheduled
10/08/2019 02:00 PM	Civil H Rm 710	Courtroom 520	Final Pre-Trial Conference	Barry-Smith, Hon. Christopher K	Canceled
10/08/2019 02:00 PM	Civil H Rm 710	Courtroom 520	Rule 56 Hearing	Barry-Smith, Hon. Christopher K	Canceled












<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
10/08/2019 02:00 PM	Civil H Rm 710	Courtroom 520	Motion Hearing	Barry-Smith, Hon. Christopher K	Rescheduled
10/09/2019 03:00 PM	Civil H Rm 710	Courtroom 520	Motion Hearing	Barry-Smith, Hon. Christopher K	Held as Scheduled
06/24/2020 10:00 AM	Civil L2 CR16	Courtroom 710	Motion Hearing	Barry-Smith, Hon. Christopher K	Held - Under advisement
















Ticklers

















<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service	08/07/2017	11/06/2017	91	
Answer	08/07/2017	12/05/2017	120	
Rule 12/19/20 Served By	08/07/2017	12/05/2017	120	09/16/2020
Rule 12/19/20 Filed By	08/07/2017	01/04/2018	150	09/16/2020
Rule 12/19/20 Heard By	08/07/2017	02/05/2018	182	09/16/2020
Rule 15 Served By	08/07/2017	12/05/2017	120	09/16/2020
Rule 15 Filed By	08/07/2017	01/04/2018	150	09/16/2020
Rule 15 Heard By	08/07/2017	02/05/2018	182	09/16/2020
Discovery	08/07/2017	07/29/2019	721	09/16/2020
Rule 56 Served By	08/07/2017	07/29/2019	721	09/27/2019
Rule 56 Filed By	08/07/2017	08/30/2019	753	09/27/2019
Final Pre-Trial Conference	08/07/2017	11/30/2018	480	09/27/2019
Judgment	08/07/2017	08/07/2019	730	09/16/2020
Under Advisement	11/06/2017	12/06/2017	30	
Under Advisement	12/18/2018	01/17/2019	30	02/15/2019
Under Advisement	06/24/2020	07/24/2020	30	09/04/2020












Docket Information







<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/07/2017	Case assigned to: DCM Track F - Fast Track was added on 08/07/2017		 Image
08/07/2017	Original civil complaint filed.	1	 Image
08/07/2017	Civil action cover sheet filed.	2	
08/07/2017	Attorney appearance On this date Steven E Kramer, Esq. added for Plaintiff Kathleen Trahan		
08/07/2017	Plaintiff(s) Kathleen Trahan's EX PARTE Motion for a Temporary Restraining Order After hearing, the restraining order is only allowed for ten days and the parties will present further argument, if any on August 17th. Copy given in hand.	3	 Image
08/15/2017	Attorney appearance On this date Kathleen M Morrissey, Esq. added for Other interested party Law Office of Rosemary Purtell, LLC		
08/15/2017	Other Interested Party(s) Law Office of Rosemary Purtell, LLC's EX PARTE Motion to Intervene. Filed in Court and set for hearing by the Court along with the return for P.I. 8/17/17 at 2:00 pm in Courtroom 740. (Inge, J.). Copy given in hand.	5	 Image
08/15/2017	Affidavit of Rosemary Purtell, Esquire. Filed in Court.	6	













<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/16/2017	Event Result: The following event: Hearing on Preliminary Injunction scheduled for 08/17/2017 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Transferred to another session		
08/17/2017	Event Result: The following event: Hearing on Preliminary Injunction scheduled for 08/17/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled		
08/17/2017	Attorney appearance On this date Kathleen M Morrissey, Esq. added as Private Counsel for Defendant-Intervenor Law Office of Rosemary Purtell, LLC		
08/18/2017	Endorsement on Motion for temporary restraining order (#3.0): DENIED After hearing the parties and the intervener, the temporary restraining order of August 7, 2017 is hereby dissolved as the plaintiff has not shown a likelihood of success in un-impounding the divorce agreement, nor has she demonstrated a risk of irreparable harm. Dated 8/17/17		 Image
08/18/2017	Endorsement on Motion to intervene (#5.0): ALLOWED No opposition. Dated 8/17/17		 Image
08/18/2017	Defendant-Intervenor Law Office of Rosemary Purtell, LLC's Motion to vacate temporary restraining order dated August 7, 2017 (Barret, J) and objection to entry of preliminary injunction up to amounts to satisfy Judicial Lien. Dated 8/17/17	7	 Image
08/18/2017	Offer of judgment filed by Defendant Pursuant to MA Rule of Civil Procedure 68 Applies To: Pelczar, Stanley J (Defendant)	8	
08/18/2017	Kathleen Trahan's Memorandum in support of extending restraining order. Filed in court 8/17/17	9	 Image
08/18/2017	Attorney appearance On this date Kathleen P Ryder, Esq. added for Defendant Stanley J Pelczar		
08/18/2017	Plaintiff Kathleen Trahan's EX PARTE Motion for leave to submit proposed order. ENORSEMENT: No action taken. Leave of court is not necessary to file a proposed order. Dated 8/18/17	10	 Image
08/31/2017	Plaintiff(s) Kathleen Trahan's EX PARTE Motion to enjoin divorce payment pending reach and apply hearing. Filed in Court and being treated as an emergency request; the Court ALLOWS such temporarily until a full hearing is to be commenced with notice to all involved parties on 9/8/17 at 11:00 a.m. in Courtroom 740 in Woburn, MA - 200 Trade Center. Copy given in hand.	11	 Image
09/08/2017	Event Result: The following event: Hearing on Equity Issue scheduled for 09/08/2017 11:00 AM has been resulted as follows: Result: Held as Scheduled		
09/08/2017	Plaintiff Kathleen Trahan's Motion and Statement of Reasons in Support of Reach and Apply Attachment. Filed in Court.	12	 Image
09/08/2017	Opposition to for Preliminary Injunction filed by Stanley J Pelczar Filed in Court.	13	 Image
09/08/2017	Affidavit of Stanley Pelczar in Support of His Opposition to Plaintiff's Motion for Preliminary Injunction. Filed in Court.	14	 Image
09/13/2017	ORDER: ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION: (Which see 2 pages); ORDER: For the foregoing reasons, it is hereby ORDERED that the plaintiff's motion for a preliminary injunction is DENIED. See scanned image. Dated: September 11, 2017. Copies mailed 9/13/17.	15	 Image
09/15/2017	Plaintiff Kathleen Trahan's EMERGENCY Motion for Reconsideration /rule 9D	16	 Image
09/15/2017	Affidavit of Steven E. Kramer	16.1	
09/18/2017	Attorney appearance On this date Ronald W Dunbar, Jr., Esq. added for Defendant Stanley J Pelczar		













<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/18/2017	Received from Defendant Pelczar, Stanley J: Answer with claim for trial by jury;	17	 Image
09/18/2017	Counterclaim filed.		
09/19/2017	Received from Plaintiff / Defendant in Counterclaim Trahan, Kathleen: Answer to the Counterclaim;	18	 Image
09/19/2017	Endorsement on Motion for Reconsideration / Rule 9D (#16.0): DENIED After review / Attested B Burke		
10/31/2017	Plaintiff Kathleen Trahan's Motion to reach and apply funds owed by defendant from defaults of settlement agreement obligations. Filed in Court and set for hearing on 11/6/17 at 2:00 p.m. in Courtroom 740.	18.1	 Image
10/31/2017	Plaintiff Kathleen Trahan's Motion for entry of default on defendant's settlement agreement obligations. Filed in Court and set for hearing on 11/6/17 at 2:00 p.m. in Courtroom 740.	18.2	 Image
10/31/2017	Affidavit of Kathleen Trahan. Filed in Court.	18.3	 Image
11/06/2017	Matter taken under advisement Judge: Inge, Hon. Garry V The following event: Motion Hearing scheduled for 11/06/2017 02:00 PM has been resulted as follows: Result: Held - Under advisement		
11/06/2017	Opposition to plaintiff's motion to reach and apply funds owed by defendant from defaults of settlement agreement obligations filed by Stanley J Pelczar Filed in Court.	18.4	 Image
11/06/2017	Opposition to plaintiff's motion for entry of default on defendant's settlement agreement obligations and MOTION to strike filed by Stanley J Pelczar Filed in Court.	18.5	 Image
11/08/2017	ORDER: ON PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT ON DEFENDANT'S SETTLEMENT AGREEMENT OBLIGATIONS AND MOTION TO REACH AND APPLY FUNDS Judge: Inge, Hon. Garry V	19	 Image
11/30/2017	Plaintiff Kathleen Trahan's EX PARTE Motion to Enjoin Payment to Defendant by Reach and Apply Defendant. Filed in Court	20	 Image
11/30/2017	Affidavit of Steven E. Kramer. Filed in court	20.1	 Image
12/05/2017	Endorsement on Motion to Enjoin Payment to Defendant by Reach and Apply Defendant (#20.0): DENIED after hearing. Dated: December 4, 2017 and mailed 12/5/17 Judge: Inge, Hon. Garry V		
12/21/2017	Plaintiff Kathleen Trahan's Motion for partial summary judgment pursuant to MRCP Rule 56(d) and Superior Court Rule 9A	21	 Image
12/21/2017	Plaintiff, Defendant Kathleen Trahan, Stanley J Pelczar's Statement of material facts and responses pursuant to Superior Court Rule 9A(b)(5)	21.1	 Image
12/21/2017	Affidavit of Stanley J Pelczar in support of his opposition to plaintiff's motion for partial summary judgment	21.2	 Image
12/21/2017	Affidavit of Kathleen Trahan in support of partial summary judgment	21.3	 Image
12/21/2017	Kathleen Trahan's Reply Memorandum to defendant's opposition	21.4	 Image
12/26/2017	The following form was generated: Notice to Appear Sent On: 12/26/2017 12:28:01		
01/05/2018	Attorney appearance On this date Nicole Marie Lara, Esq. added as Private Counsel for Defendant-Intervenor Law Office of Rosemary Purtell, LLC		
01/08/2018	Attorney appearance On this date Kathleen M Morrissey, Esq. dismissed/withdrawn as Private Counsel for Defendant-Intervenor Law Office of Rosemary Purtell, LLC		





<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/29/2018	Notice of voluntary dismissal (41a.I.i) Now comes the Intervenor, the Law Office of Rosemary Purtell, LLC, who was allowed to intervene pursuant to an Order dated 8/17/17 (Kirpalani, J.) and hereby requests that this honorable court dismiss its appearance in the above-referenced action.	22	 Image
01/31/2018	Party status: Defendant-Intervenor Law Office of Rosemary Purtell, LLC: Dismissed;	23	
02/13/2018	Event Result: Judge: Inge, Hon. Garry V The following event: Rule 56 Hearing scheduled for 02/13/2018 02:00 PM has been resulted as follows: Result: Held as Scheduled		
03/06/2018	Plaintiff Kathleen Trahan's EX PARTE Motion to Enjoin Payment by Reach and Apply Trustee to Defendant Pending Summary Judgment Decision	24	 Image
03/06/2018	Endorsement on Motion to Enjoin (#24.0): DENIED After review and ruling i.e. Partial Summary Judgment being this day; Motion DENIED without prejudice. Dated: March 5, 2018 Judge: Inge, Hon. Garry V		 Image
03/06/2018	MEMORANDUM & ORDER: MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT: ORDER: For the foregoing reasons, it is hereby ORDERED that plaintiff Kathleen Trahan's motion for partial summary judgment is DENIED. Dated: March 5, 2018 Judge: Inge, Hon. Garry V	25	 Image
04/03/2018	Plaintiff Kathleen Trahan's EMERGENCY Motion for Evidentiary Hearing on Paragraph 23 of Settlement Agreement	26	 Image
04/11/2018	Plaintiff Kathleen Trahan's EX PARTE Motion for evidentiary hearing on Paragraph 23 of Settlement Agreement	27	 Image
06/07/2018	Plaintiff(s) Kathleen Trahan's Motion to Reach and Apply Payments from Trustee Defendant. Filed in Court and set down for hearing 6/12/18 at 2:00 pm in Courtroom 740. (Hogan, J.). Copy given in hand.	28	 Image
06/12/2018	Opposition to to Plaintiff's Motion to Reach and apply Payments from trustee Defendant filed by (Fax copy) filed in court		 Image
06/12/2018	Event Result:: Motion Hearing scheduled on: 06/12/2018 02:00 PM Has been: Held as Scheduled Hon. Garry V Inge, Presiding Appeared: Staff: Brian F Burke, Assistant Clerk Magistrate		
06/13/2018	Plaintiff Kathleen Trahan's Motion for Protective Order and C. 231 6F Sanctions	29	 Image
06/13/2018	Endorsement on Motion for Protective Order (#29.0): Other action taken Filed in court and not being considered by the court at this time. Dated: June 12, 2018 Judge: Hogan, Hon. Maureen		 Image
06/13/2018	Plaintiff Kathleen Trahan's EMERGENCY Motion to strike Affidavit of Defendant, Stanley Pelczar	30	 Image
06/13/2018	Affidavit of Steven E. Kramer	31	 Image
06/14/2018	Opposition to to Plaintiff's Rule 9A(e)(l) Emergency Motion to Strike Affidavit of Defendant, Stanley J. Pelczar filed by	30.1	 Image
06/19/2018	Endorsement on Motion to strike (#30.0): DENIED Dated: June 15, 2018 Judge: Hogan, Hon. Maureen		 Image
06/19/2018	Endorsement on Motion to Reach and Apply (#28.0): DENIED After hearing and consideration, the motion is DENIED. Because the plaintiff has failed to demonstrate a likelihood of success an has failed to show she will suffer irreparable harm. Dated: June 15, 2018 Judge: Hogan, Hon. Maureen		 Image
06/28/2018	Court received Plaintiff's Petition to Single Justice Pursuant to G.L. c. 231 sec 118 (First Paragraph) related to appeal	32	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/29/2018	Notice of docket entry received from Appeals Court Please take note that, with respect to the Petition pursuant to G.L. c. 231, sec 118 with attachments, filed by Kathleen Trahan. (Paper #1), on June 27, 2018, the following order was entered on the docket of the above-referenced case: RE#1.: After review of the petition, memorandum of law and supporting documentation, the petition is DENIED. (Singh, J.) Dated: June 27, 2018	33	 Image
07/11/2018	Plaintiff Kathleen Trahan's Motion for partial summary judgment (second motion)	34	 Image
07/11/2018	Kathleen Trahan's Memorandum of law in support of #34 motion.	34.1	 Image
07/11/2018	Kathleen Trahan's Reply Memorandum	34.2	 Image
07/11/2018	Plaintiff, Defendant Kathleen Trahan, Stanley J Pelczar's Statement of material facts and responses pursuant to superior court rule 9A(b)(5)	34.3	 Image
07/11/2018	Affidavit of Stanley J. Pelczar in support of his opposition to #34 motion.	34.4	 Image
07/11/2018	Stanley J Pelczar's Memorandum of law in support of his opposition to #34 motion.	34.5	 Image
07/17/2018	The following form was generated: Notice to Appear Sent On: 07/17/2018 08:54:31		
08/03/2018	Plaintiff Kathleen Trahan's Motion to Expedite Summary Judgment Motion	35	 Image
08/03/2018	Affidavit of Steven E. Kramer	35.1	 Image
08/03/2018	Opposition to Plaintiff Kathleen Trahan's Motion to Expedite Summary Judgment Motion filed by Applies To: Pelczar, Stanley J (Defendant)	35.2	 Image
08/03/2018	Kathleen Trahan's Reply Memorandum Applies To: Pelczar, Stanley J (Defendant)	35.3	 Image
08/13/2018	Event Result:: Rule 56 Hearing scheduled on: 11/13/2018 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Helene Kazanjian, Presiding Appeared: Staff: Brian F Burke, Assistant Clerk Magistrate		
08/13/2018	The following form was generated: Notice to Appear Sent On: 08/13/2018 10:03:46		
09/04/2018	Event Result:: Rule 56 Hearing scheduled on: 09/05/2018 02:00 PM Has been: Rescheduled For the following reason: Transferred to another session Hon. Helene Kazanjian, Presiding Appeared: Staff: Brian F Burke, Assistant Clerk Magistrate		
09/05/2018	Matter taken under advisement: Rule 56 Hearing scheduled on: 09/05/2018 02:00 PM Has been: Held - Under advisement Comments: L2 action heard in Courtroom 620. Hon. Christopher K Barry-Smith, Presiding Appeared: Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		

<u>Docket</u> <u>Date</u>	<u>Docket Text</u>	<u>File</u> <u>Ref</u> <u>Nbr.</u>	<u>Image</u> <u>Avail.</u>
09/12/2018	MEMORANDUM & ORDER: CONCLUSION AND ORDER Trahan's motion for partial summary judgment is allowed in part and denied in part as follows. Partial summary judgment as to liability shall enter insofar as: 1) Pelczar has defaulted on his payment obligations under the Settlement Agreement; 2) by virtue of that default and paragraph 23 of the Settlement Agreement, Pelczar's overall payment obligation increased from \$275,000 to \$375,000; and 3) Pelczar's increased obligation will be reflected in the amount Pelczar must pay in his quadrennial "catch-up" payments, but will not alter the monthly or annual payments due under the Settlement Agreement. Judgment on the amount that Pelczar owes Trahan will not enter at this time, however, because that judgment may be affected by adjudication of Pelczar's counterclaims. The parties shall appear at a scheduling conference on September 17, 2018 to discuss further proceedings. Further, for the reasons discussed at hearing: i) Count Two of Trahan's complaint, for contempt, is dismissed because Trahan has not identified a court order or judgment that Pelczar violated; and ii) Count Three of Pelczar's counterclaim, for slander, is dismissed for failure to state a claim, without prejudice to Pelczar filing an amended counterclaim that satisfy the pleading requirements for slander, including identifying the allegedly slanderous statements, their context, to whom they were made, and how they caused Pelczar damage. So ordered. /s/ Christopher K. Barry-Smith Justice of the Superior Court DATE: September 11, 2018 Judge: Barry-Smith, Hon. Christopher K	36	 Image
09/13/2018	Affidavit of Kathleen M. Trahan	37	 Image
09/13/2018	Plaintiff(s) Kathleen Trahan's Motion to Escrow Trustee Defendant Payment	38	 Image
09/17/2018	Event Result:: Conference to Review Status scheduled on: 09/17/2018 02:00 PM Has been: Held as Scheduled. Discovery to be extended for thirty days. Depositions of Kathleen Trahan and of Nancy Pelczar, the ex-wife, subject to any issues she may raise. Document request allowed. Rule 56 motions shall be served by 10-22-18. Responses thereto to be served by 11-5-18. Replies due by 11-8-18. Hon. Christopher K Barry-Smith, Presiding Appeared: Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate Judge: Barry-Smith, Hon. Christopher K		
09/17/2018	Event Result:: Motion Hearing scheduled on: 09/17/2018 02:00 PM Has been: Held as Scheduled Hon. Christopher K Barry-Smith, Presiding Appeared: Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
09/24/2018	Endorsement on Motion to Escrow Trustee Defendant Payment (#38.0): DENIED The plaintiff has established a firm likelihood that she will succeed in obtaining a judgment against defendant arising out of his non-payment of obligations under a settlement agreement entered by the parties in 2012 and modified in 2015. The court has accounted for the plaintiff's likelihood of success in establishing a schedule to have this case (including the defendant's counterclaim) adjudicated promptly, hopefully in the next three months, so that defendant's non-payment does not burden the plaintiff for an even longer duration, and so that plaintiff's claim is adjudicated while the \$13,000 monthly payments to defendant from his ex-wife continue. Plaintiff's motion to escrow monthly payments to defendant from his ex-wife, however, requires the court to consider irreparable harm flowing to plaintiff from defendant's non-payment. Plaintiff's harm remains that defendant owes her money. Even with plaintiff's firm likelihood of success, the record does not support injunctive relief, at this time, to require defendant's ex-wife to escrow her monthly payments. If plaintiff is successful at summary judgment, she may re-apply to reach those monthly payments and apply them to defendant's debt to plaintiff. Motion to escrow trustee defendant's payment is DENIED, without prejudice Judge: Barry-Smith, Hon. Christopher K		 Image
10/09/2018	Plaintiff Kathleen Trahan's Motion for Protective Order	39	 Image
10/09/2018	Plaintiff Kathleen Trahan's Motion for Reconsideration of Denial of Motion To Escrow Reach and Apply Defendant Payment	40	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/10/2018	Endorsement on Motion for Protective Order (#39.0): Other action taken The within matter is set down for hearing on October 16, 2018 in Courtroom 610 at 2:00 pm. Copy given in hand. Judge: Barry-Smith, Hon. Christopher K		 Image
10/10/2018	Endorsement on Motion for Reconsideration of Denial of Motion to Escrow Reach and Apply Defendant Payment (#40.0): Other action taken The within matter is set down for hearing on October 16, 2018 in Courtroom 610 at 2:00 pm. Copy given in hand. Judge: Barry-Smith, Hon. Christopher K		 Image
10/16/2018	Event Result:: Hearing for Protective Order scheduled on: 10/16/2018 02:00 PM Has been: Held as Scheduled Hon. Christopher K Barry-Smith, Presiding Appeared: Plaintiff Steven E Kramer, Esq., Defendant Ronald W Dunbar, Jr., Esq., Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
10/16/2018	Kathleen Trahan's Memorandum in support of of motions for reconsideration and protective order (E-MAILED COPY)	41	 Image
10/16/2018	Affidavit of Nancy Frattaroli (E-MAILED COPY- Filed in Court this day)	42	 Image
10/16/2018	Opposition to plaintiff's motion for reconsideration filed by Stanley J Pelczar (Filed in Court this day)	43	 Image
10/16/2018	Opposition to motion for protective order filed by Stanley J Pelczar (Filed in Court this day)	44	 Image
10/16/2018	Affidavit of Stanley J. Pelczar (Filed in Court this day)	45	 Image
10/16/2018	Endorsement on Memorandum in support of motions for reconsideration and protective order. After hearing, motion to reconsider escrow of reach and apply defendant's payments is (#41.0): DENIED Protective order entered as follows : 1) Defendant shall answer interrogatory by October 25, 2018; 2) depositions of Ms. Trahan and Ms. Pelczar shall occur by Nov. 15, shall not exceed three hours each, and parties shall agree on a date and time for each, accounting for Ms. Trahan's health condition. So ordered. Judge: Barry-Smith, Hon. Christopher K		 Image
11/01/2018	The following form was generated: Notice to Appear Sent On: 11/01/2018 12:00:07		
11/07/2018	ORDER: FOR SPECIAL ASSIGNMENT: After due consideration of the request for special assignment in the above-captioned case, said request is ALLOWED. It is hereby ORDERED that the Honorable Christopher Barry-Smith, Associate Justice of the Superior Court, is specially assigned to hear the above-captioned case all purposes. The Clerk's office will notify all counsel of record. Dated: October 31, 2018 Judge: Fabricant, Hon. Judith	46	 Image
11/27/2018	Plaintiff Kathleen Trahan's EX PARTE Motion to Quash Subpoena	47	 Image
11/30/2018	Endorsement on Motion to quash subpoena (#47.0): Other action taken This motion will not be decided on an ex-parte basis, but the Court will treat this as an emergency motion to quash subpoena. Counsel for Mr. Pelczar shall file an opposition by Dec. 7, 2018 and the motion will be heard Dec, 11, 2018. Pending that hearing, no production pursuant to the subpoena need occur. Judge: Barry-Smith, Hon. Christopher K		 Image
12/06/2018	Attorney appearance @On this date Kathleen P Ryder, Esq. @dismissed/withdrawn @for Defendant Stanley J Pelczar		
12/10/2018	Opposition to Plaintiff Kathleen Trahan's EX PARTE Motion to Quash Subpoena filed by Applies To: Pelczar, Stanley J (Defendant)	48	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/11/2018	Event Result:: Motion Hearing scheduled on: 12/11/2018 02:00 PM Has been: Held as Scheduled Hon. Christopher K Barry-Smith, Presiding Appeared: Plaintiff Steven E Kramer, Esq., Defendant Ronald W Dunbar, Jr., Esq., Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
12/14/2018	Plaintiff Kathleen Trahan's Motion for summary judgment, MRCP 56 on counterclaims	49	 Image
12/14/2018	Kathleen Trahan's Memorandum in support of motion for Summary Judgment	49.1	 Image
12/14/2018	Plaintiff Kathleen Trahan's Statement of material facts	49.2	 Image
12/14/2018	Brief filed: Reply Memorandum Applies To: Trahan, Kathleen (Plaintiff)	49.3	
12/14/2018	Affidavit of Kathleen Trahan	49.4	 Image
12/14/2018	Affidavit of Steven E. Kramer	49.5	 Image
12/17/2018	Event Result:: Rule 56 Hearing scheduled on: 12/17/2018 02:00 PM Has been: Rescheduled For the following reason: Request of Defendant Hon. Christopher K Barry-Smith, Presiding Appeared: Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
12/18/2018	Matter taken under advisement: Rule 56 Hearing scheduled on: 12/18/2018 02:00 PM Has been: Held - Under advisement Hon. Christopher K Barry-Smith, Presiding Appeared: Plaintiff Steven E Kramer, Esq., Defendant Ronald W Dunbar, Jr., Esq., Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
12/18/2018	Plaintiff Kathleen Trahan's Response to defendant's additional statement of material facts (Filed in Court this day)	50	 Image
12/18/2018	Plaintiff(s) Kathleen Trahan's Motion to attach reach and apply defendant's payment to defendant (Filed in Court this day)	51	 Image
12/20/2018	Endorsement on Motion to quash (#47.0): ALLOWED After hearing and careful consideration of the parties positions the motion to quash subpoena is ALLOWED. Mr. Pelczar's allegations of interference with contractual relations do not justify the broad discovery of phone records that is sought, which is unduly burdensome and will cause unnecessary expenditures by both parties. Dated: December 18, 2018		 Image
12/20/2018	Plaintiff Kathleen Trahan's Motion for security and reply memorandum	52	 Image
12/20/2018	Affidavit of Steven E. Kramer	53	 Image
01/04/2019	Plaintiff Kathleen Trahan's EMERGENCY Motion for Reach and Apply Attachment	54	 Image
01/10/2019	Opposition to to Defendants motion to strike filed by Kathleen Trahan	55	 Image

<u>Docket</u> <u>Date</u>	<u>Docket Text</u>	<u>File</u> <u>Ref</u> <u>Nbr.</u>	<u>Image</u> <u>Avail.</u>
02/15/2019	ORDER: Decision and Order on Plaintiff's Motion for Summary Judgment as to Liability and Allowing Plaintiff's Motion to Reach and Apply Monthly Payments to Defendant. The Court Ordes the Following Preliminary Injunction : The Reach and Apply defendant, Nancy Pelczar, shall with respect to any other monthly or periodic payments due to defendant, Stanley Pelczar, pursuant to the divorce settlement or any other agreement or obligation, make all such payments to counsel for Stanley Pelczar in this action. Attorney Ronald Dunbar , who shall hold all such payments as escrow agent under this Order. For each monthly period, beginning on February 15,2019 (and continuing March 15, April 15, etc.) , with respect to all payments received from Nancy Pelczar and regardless of the amount of those payments. Attorney Dunbar shall distribute \$5000.00 from such payments to Stanley Pelczar and shall retain all remaining amounts from all payments during the month in a seperate escrow account, where it shall remain until further order of the Court. By way of example, if Nancy Pelczar is to make a \$13,194.64 payment st Stanley Pelczar after issuance and service of this order, pursuant to distribute \$5000.00 to Stanley Pelczar and retain \$8,194.64 in a separate escrow account pending further order of the Court. Upon its issuance, this decision and order will provided to counsel for Trahan and pelczar. Counsel for Trahan shall serve the order forthwith upon the reach and apply defendant, Nancy Pelczar. if Stanley Pelczar contends that the \$5000.00 monthly allotment does not suffice to cover his living expenses, he may raise that issue by motion at the March 5,2019 status conference. SO ORDERED dated 02/15/2019	56	 Image
02/15/2019	The following form was generated: Notice to Appear Sent On: 02/15/2019 10:09:29		
03/05/2019	Event Result:: Status Review scheduled on: 03/05/2019 03:00 PM Has been: Held as Scheduled Hon. Christopher K Barry-Smith, Presiding Appeared: Staff: Debra J Newman, Assistant Clerk		
04/08/2019	Plaintiff Kathleen Trahan's EMERGENCY Motion to schedule assessment of damages hearing	57	 Image
05/07/2019	Plaintiff Kathleen Trahan's EX PARTE Motion to amend preliminary injunction	58	 Image
05/08/2019	ORDER: This order follows the March 5, 2019 status conference and the parties' submissions concerning how to adjudicate the remaining claims in this case, and addresses motions pending in this case. Procedural Background This civil action arises out of the defendant, Stanley Pelczar's repeated failure to comply with a settlement agreement he reached with the plaintiff, Kathleen Trahan in December 2012. Back in 2012, Trahan had filed a civil action in Suffolk County alleging that Pelczar owed her more than \$500,000 she had loaned him in several installments beginning in 2005 (the "Suffolk lawsuit"). Trahan and Pelczar settled the Suffolk lawsuit on December 21, 2012 when they executed a Settlement Agreement and filed a notice of dismissal. In this civil action brought in August 2017, Trahan alleges breach of contract due to Pelczar's failure to pay certain amounts due under the Settlement Agreement. Pelczar filed a counterclaim alleging that Trahan breached the Settlement Agreement by disparaging him during his prior divorce proceeding, and for breach of the covenant of good faith and fair dealing, and interference with contractual relations (namely, his divorce agreement with his ex-wife). In a decision dated September 11, 2018, I granted partial summary judgment to Trahan. That decision interpreted the settlement agreement and determined that it had been breached by Pelczar due to numerous missed payments. I declined to enter judgment on the contract for Trahan, however, because: 1) Pelczar alleged that Trahan's alleged disparagement of him was material breach of the settlement agreement that excused his performance of the contract; and 2) Pelczar had also brought counterclaims which (if successful) could conceivably impact the amount of damages due Trahan for breach of contract. Following expedited discovery and additional briefing, the first issue identified above was eliminated. In a decision dated February 15, 2019, I held that Pelczar's contention that Trahan had materially breached the contract failed as a matter of law, and granted summary judgment as to liability in favor of Trahan on her claim for breach of contract. Before final judgment can enter on Trahan's contract claim, which will include recovery of attorneys' fees pursuant to the settlement agreement, an assessment of damages, including attorney's fees must occur. Also before entering judgment, the court has consistently stated that it intends to address Pelczar's counterclaims for breach of contract (not including disparagement), breach of the implied covenant of good faith and fair dealing, and intentional interference with contractual relations. Also in my February 15, 2019 decision, I entered a preliminary injunction requiring, with respect to the monthly payments of \$13,194.64 that Stanley Pelczar received from the reach-and-apply defendant, Nancy Pelczar, that only \$5,000 be paid to Stanley Pelczar and the remainder (\$8,194.64 monthly) be held in escrow by Pelczar's counsel in this case, to remain available to satisfy any eventual judgment against Pelczar. Trahan has repeatedly urged the court to summarily dispose of Pelczar's counterclaims, arguing that they are meritless and designed only to delay Trahan's judgment. The court likewise has questioned the merits of, and motivation behind, Pelczar's counterclaims. But there has been no motion for summary judgment or other mechanism to adjudicate Pelczar's counterclaims. My skepticism cannot suffice to decide the counterclaims; there must be a record in which the parties identify disputed or undisputed facts to determine if the counterclaims may proceed. Fully aware that Trahan does not believe further litigation should be necessary, but lacking a mechanism to adjudicate the counterclaims, immediately below the	59	 Image

**Docket
Date****Docket Text****File
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Nbr.** **Image
Avail.**

court establishes a schedule to adjudicate all remaining claims and the issue of damages due Trahan.
I. Further Procedural Order

Two things must be accomplished to resolve all aspects of this case: i) adjudication of Pelczar's counterclaims for breach of contract, implied covenant of good faith and fair dealing and intentional interference with contractual relations; and ii) assessment of damages on Trahan's breach of contract claims, including attorney's fees to Trahan.

Adjudication of Counterclaims. With respect to Pelczar's counterclaims:

1. The parties may conduct discovery concerning those counterclaims, and, absent leave of court, discovery shall be limited to: (a) not more than ten requests for production of documents and not more than five interrogatories between Pelczar and Trahan (to the extent such requests have not already occurred); and (b) depositions of Trahan, Pelczar, and reach and apply defendant, Nancy Pelczar, with no deposition to exceed three hours duration. Any deposition subpoena to Nancy Pelczar may request production of documents as well. Beyond these items, no discovery shall be issued absent leave of court. Any counsel unreasonably limiting the deposition testimony of their client should expect to pay the opposing party's fees in connection with the deposition.

2. Parties shall complete discovery by Friday, June 28, 2019.

3. Dispositive motions, if any, with respect to Pelczar's counterclaims shall be served by July 29, 2019 and filed with the court by August 30, 2019.

4. If dispositive motions are filed, the court will schedule a hearing date. If not, the court will schedule a final pretrial conference.

5. Mr. Pelczar is reminded that the settlement agreement provides for attorney's fees for enforcing the agreement and the court anticipates that Trahan's fees related to Pelczar's counterclaims ultimately will be party of judgment.

Assessment of Damages. With respect to the assessment of damages for Trahan's contract claim, the schedule is designed to account for fees incurred by Trahan during the process of adjudicating Pelczar's counterclaims.

1. Once the parties have filed their dispositive motions, or advised the court that there will be no dispositive motions (that is, presumably on or about August 30, 2019), counsel for Trahan shall file:

a. A motion for assessment of damages, identifying the amount then due under the settlement agreement together with any other relief requested by Trahan due to Pelczar's breach of contract; and

b. A petition for attorney's fees claimed under the settlement agreement.

2. Both the motion and the petition shall be served under Superior Court Rule 9A and filed with the court only after Pelczar has served his opposition, to which Trahan may submit a reply.

3. Once the motion and petition are filed, the court will schedule a hearing, which may occur on the same date as hearing on any dispositive motion.

II. Motions to Alter Preliminary Injunction of February 15, 2019

Both Trahan and Pelczar have filed motions to modify the preliminary injunction entered on February 15, 2019.

On or about March 25, 2019, Pelczar moved to modify the order, asserting that \$5,000 per month did not suffice for him to meet his monthly expenses. Trahan opposed that request. Pelczar's motion sets forth his monthly expenses, but makes no meaningful mention of his income. The court agrees with Trahan that if Pelczar seeks to modify the order, at a minimum he must disclose his income and other assets that may be available to meet monthly expenses. Pelczar's motion to modify is denied.

On May 7, 2019, Trahan filed an ex parte motion to amend the preliminary injunction, urging that the entire \$13,194.64 monthly payment from Nancy Pelczar to Stanley Pelczar be placed in escrow to satisfy Trahan's eventual judgment. Trahan's motion does not provide a reason to alter the calculation made by the court in its February 15, 2019 order, which sought balance the interests of Trahan and Pelczar with respect to the reach-and-apply payments from Pelczar's ex-wife. Trahan's motion is denied. If Trahan has information concerning any lump sum payment that is anticipated to be made to Pelczar by the reach-and-apply defendant, it may raise that information with the court. However, any subsequent motions related to the February 15th preliminary injunction shall be served under Superior Court Rule 9A unless they pose an emergency under that rule.

So ordered.

DATE: May 8, 2019












Christopher K. Barry-Smith
Justice of the Superior Court








Entered and copies sent 5/8/19











05/09/2019 The following form was generated:










Notice to Appear














Sent On: 05/09/2019 12:18:52



















<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/09/2019	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 05/09/2019 12:20:50		
05/13/2019	Plaintiff(s) Kathleen Trahan's Motion to amend preliminary injunction (substituted motion)	59.1	 Image
05/14/2019	Plaintiff Kathleen Trahan's EMERGENCY Motion for Reconsideration pursuant to Superior Court Rules 9A(d) and 9D.	60	
05/15/2019	Endorsement on Motion for Reconsideration Pursuant to Superior Court Rules 9A(d) and 9D (#60.0): DENIED Reconsideration is denied. The court is familiar with all the pleadings in this case and reviewed them again immediately before issuing its recent order which stated, in part, that plaintiff has not provided a proper mechanism to enter judgment on all claims. (Dated: 5/15/19) notice sent 5/15/19 Judge: Barry-Smith, Hon. Christopher K		 Image
05/24/2019	Endorsement on Motion to amend the Preliminary Injunction (Substituted Motion) (#59.1): DENIED The court will maintain the balance it previously struck with respect to providing security for Ms. Trahan's anticipated eventual judgment, and Mr. Pelczar's reliance on payments from his ex-wife for normal living expenses. (Dated: 5/23/19) notice sent 5/24/19		 Image
06/05/2019	Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY: Please take note that on May 31, 2019, the following entry was made on the docket of the above-referenced case: ORDER: The Petitioner seeks interlocutory review of the 5/8/19 Middlesex Superior Court. (Barry-Smith, J.) Order denying her request to enter summary judgment on her behalf and her request to amend the preliminary injunction. To the extent Petitioner requests that I reverse the order and direct that judgment be entered in her favor, the relief requested is beyond the authority of the single justice to grant. See DeLucia v. Kfoury, 93 Mass. App. Ct. 166, 168 (2018); Pemberton v. Pemberton, 9 Mass. App. Ct. 809, 809 (1980). Petitioner's request for relief regarding the preliminary injunction is denied, as the petitioner has not demonstrated a clear error of law or abuse of discretion on the part of the Superior court judge. See Jet-Line Services, Inc. v. Board of Selectmen of Stoughton, 25 Mass. App. Ct. 645, 646 (1988). While I theoretically could refer the case to a panel for plenary resolution, I do not find the issues presented to merit such extraordinary treatment. Accordingly, all relief requested is denied. (Englander, J.) Dated: May 31, 2019	61	 Image
06/07/2019	Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY: Please take note that, with respect to the Motion to reconsider filed for Kathleen Trahan by Attorney Steven Kramer. (Paper #6), on June 5, 2019, following order was entered on the docket of the above-referenced case: RE:#6: After careful consideration, the motion for reconsideration is denied. The petition does not present issues that merit interlocutory review by a full panel. I understand that petitioner has won summary judgment on her affirmative claims, and is concerned (apparently justifiably) about her ability to recover after final judgment. However, if there is to be any adjustment of the current orders regarding pre-judgment security, it should be done by the motion judge who has given careful attention to the case, and whose orders to date do not evidence an abuse of discretion. (Englander, J.) Dated: June 5, 2019	62	 Image
06/13/2019	Plaintiff Kathleen Trahan's Motion to amend complaint pursuant to Rules 15(b) and 15(c) to add claim for c 93A, sec 11	63	 Image
06/13/2019	Opposition to plaintiff's motion to amend complaint filed by Stanley J Pelczar	63.1	 Image
06/14/2019	Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY: Please take note that, with respect to the Motion to stay under MRAP. 6(a) with attachments, filed by Kathleen Trahan. (Paper #10), on June 11, 2019, the following order was entered on the docket of the above-referenced case: RE#10: DENIED. Dated: June 11, 2019	64	 Image
06/14/2019	Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY: Please take note that, with respect to the Motion to reconsider Order dated 05/31/2019, filed by Kathleen Trahan. (Paper #9), on June 11, 2019, the following order was entered on the docket of the above-referenced case: RE#9: DENIED. Dated: June 11, 2019	65	 Image
06/14/2019	Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY: Please take note that, with respect to the Motion to Waive e-file requirement filed for Kathleen Trahan by Attorney Steven E. Kramer. (Paper #8), on June 11, 2019, the following order was entered on the docket of the above-referenced case: RE#8: ALLOWED. Dated: June 11, 2019	66	 Image
06/21/2019	Defendant Stanley J Pelczar's EMERGENCY Motion to Extend Discovery Deadline, Strike Plaintiff's Motion for Summary Judgment and For Attorney's Fees	67	
06/21/2019	Opposition to Defendant's Emergency Motion filed by Kathleen Trahan	68	 Image












<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/27/2019	Endorsement on Motion to amend the Complaint Pursuant to Rule 15(b) and 15 (c) to Add Claim for C. 93A, Section 11 (#63.0): Other action taken The motion to amend will be heard on the same day as motion for summary judgment in this case. (Dated: 6/26/19) notice sent 6/27/19 Judge: Barry-Smith, Hon. Christopher K		 Image
06/27/2019	The following form was generated: Notice to Appear Sent On: 06/27/2019 10:45:24		
06/27/2019	Endorsement on Motion of Defendant, Stanley J. Pelczar to Extend Discovery Deadline, Strike Plaintiff's Motion for Summary Judgment and For Attorney's Fees (#67.0): Other action taken The court has noted several times that plaintiff is very likely to obtain judgment against defendant, but that, nonetheless, defendant's counterclaims require adjudication. In its May 8th order, the court established the schedule to adjudicate all remaining issues, with an eye toward prompt finalization of this case. Once again, counsel for plaintiff disagreed and so has complicated that schedule for final adjudication. In response to the emergency motion: 1. Discovery is extended until July 28, 2019, and counsel for plaintiff shall cooperate in scheduling the time limited depositions requested, promptly. 2. The plaintiff's motion for summary judgment is not stricken, however, defendant shall have until August 9, 2019 to respond to the plaintiff's summary judgment motion following Rule 9A. 3. Request for fees denied. (Dated: 6/25/19) notice sent 6/27/19 Judge: Barry-Smith, Hon. Christopher K		 Image
07/29/2019	ORDER: order The court, sitting in a Suffolk criminal session, has received via email a series of apparent pleadings in this case. Although the pleadings do not appear to have been entered on the civil docket in Middlesex County where this specially-assigned case is pending, I enter this order to address the pleadings in order to preserve the current hearing schedule and to avoid wasting resources. In orders dated May 8, 2019 and June 27, 2019, I explained, in response to a series of motions from both sides, that the most efficient means to litigate this case was to conduct discovery, limited to three depositions, none to exceed three hours in duration, and then hear summary judgment. The latest series of pleadings from Trahan's counsel ignores completely my prior rulings. Trahan's counsel seeks, again, to avoid the contemplated depositions of Trahan and the reach-and-apply defendant. His reasons are identical to those asserted previously and rejected, namely, that the current record permits me to issue summary judgment on all claims in favor of Trahan. Nothing has changed. Trahan's motions are denied as follows: i) Trahan's emergency Rule 20(f) motion and Rule 20(f) memorandum of law (dated July 8, 2019) are treated as a motion for protective order to avoid any further discovery, and a motion for summary judgment, as those are the two forms of relief sought by Trahan. The motion and memorandum will be accepted for filing, but the relief requested is denied, as the papers raise issues already argued and rejected in this case. ii) Trahan's emergency motion for discovery instructions (dated July 2, 2019) is denied. The depositions have already been limited to three persons (plaintiff, defendant and reach and apply defendant) and time-limited to a maximum of three hours. Those are the only restrictions on the depositions. If counsel for Trahan seeks to unreasonably restrict the scope of the depositions, he should expect that a motion for sanctions will be considered. iii) Trahan's recent motions, close in time to my rejection of the same contentions on May 8 and June 27, demonstrate a willingness to waste resources of the parties and the court. If Pelczar wishes to file a motion for attorney's fees in connection with responding to these recent motions, he may do so following Superior Court Rule 9A. Any such motion will be heard on October 8, 2019 together with other motions in this case. In his opposition to Trahan's motions, Pelczar asked to extend discovery for thirty days because Trahan refused to comply with the court's prior orders to cooperate in scheduling his client(s) for deposition. Given the obstreperous conduct of Trahan's counsel, Pelczar's emergency motion is allowed as follows: the discovery deadline is extended two weeks through August 12, 2019 and the time for Pelczar to respond to summary judgment is extended through August 26, 2019. So ordered. Dated at Woburn this 23rd day of July, 2019 Judge: Barry-Smith, Hon. Christopher K	69	 Image
07/29/2019	Plaintiff Kathleen Trahan's EMERGENCY Motion of limits discovery	70	 Image
07/29/2019	Kathleen Trahan's Memorandum in support of EMERGENCY Motion of limits discovery	70.1	 Image
07/29/2019	Response to defendant's opposition and request for discovery extension filed by Applies To: Kramer, Esq., Steven E (Attorney) on behalf of Trahan, Kathleen (Plaintiff)	70.2	 Image
07/29/2019	Plaintiff Kathleen Trahan's Supplement, Memorandum of law	70.3	 Image














<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/08/2019	Defendant Stanley J Pelczar's EMERGENCY Motion to Dismiss plaintiff's complaint or , in the alternative, extend the discovery deadline thirty days and award attorney's fees	71	 Image
08/08/2019	Notice of docket entry received from Appeals Court Please take note that, with respect to the Petition pursuant to G.L. c. 231, 118 with attachments, filed by Kathleen Trahan (Paper #1), on August 6, 2019, the following order was entered on the docket of the above-referenced case: RE#1: After review of the petition, memorandum and supporting documents, the petition is denied. (Vuono, J.)	72	 Image
08/08/2019	Notice of docket entry received from Appeals Court Please take note that, with respect to the Motion to waive Electronic Filing, filed by Kathleen Trahan (Paper #2), on August 6, 2019, the following order was entered on the docket of the above-referenced case: RE#2: Allowed. The court will consider the plaintiff's paper filings. Dated: August 6, 2019	73	 Image
08/15/2019	Plaintiff Kathleen Trahan's EX PARTE Motion to amend the Preliminary Injunction	73.1	 Image
08/19/2019	Plaintiff Kathleen Trahan's Motion to Recuse and Disqualify Judge Christopher Barry-Smith	74	 Image
08/23/2019	Endorsement on Motion to Dismiss (#71.0): Other action taken Because the motions now pending in this case concern issues that the court has addressed several times, little or no discussion of these motions is necessary. 1) Defendant Pelczar has moved to dismiss the complaint (Pleading No. 71) as a sanction due to plaintiff's repeated refusal to produce plaintiff for a three hour-maximum deposition, notwithstanding previous orders making clear that the time-limited discovery should go forward prior to the court's consideration of summary judgment on October 8, 2019. The motion to dismiss is DENIED. Defendant's alternative request to extend the discovery period, again, in order to accommodate the previously ordered depositions (which were supposed to be completed by August 12, 2019) is allowed in part as follows: The previously-ordered discovery, namely two depositions, shall be completed by August 30, 2019 and defendant's time within which to respond to summary judgment is extended until September 13, 2019. 2) Plaintiff's ex parte motion to amend the preliminary injunction is DENIED. 3) Any motions requesting legal fees as a sanction arising out of this discovery dispute may be filed, utilizing Superior Court Rule 9A, in advance of October 8, 2019 and will be considered at that time. Dated: August 15, 2019		 Image
08/26/2019	Defendant Stanley J Pelczar's EMERGENCY Motion to Extend the Time to Respond to Summary Judgment until Ten Days After the Depositions of the Plaintiff and Reach and Apply Defendant are Conducted	75	 Image
08/29/2019	The following form was generated: Notice to Appear Sent On: 08/29/2019 14:21:55		
09/03/2019	Notice of docket entry received from Appeals Court You are hereby notified that on August 29, 2019, the following was entered on the docket of the above referenced case: JUDGMENT: denying relief under c. 211, s. 3 without a hearing. (Budd, J.)	76	 Image
09/04/2019	Event Result:: Motion Hearing scheduled on: 09/04/2019 02:00 PM Has been: Held as Scheduled Hon. Christopher K Barry-Smith, Presiding Appeared: Plaintiff Steven E Kramer, Esq., Defendant Ronald W Dunbar, Jr., Esq., Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
09/05/2019	Endorsement on Motion to recuse. After a hearing on 9-4-2019, the plaintiff's motion to recuse is (#74.0): DENIED for the reasons set forth on the record at hearing. The defendant's emergency motion for additional time to respond to summary judgment is allowed insofar as : the depositions previously ordered, not more than two each not to exceed three hours, shall occur on or before 5:00 p.m. on Friday, September 13. By the parties' agreement, Ms. Trahan's deposition will occur Tuesday, Sept. 10 at 11:00 a.m. The defendant shall file opposition to summary judgment on or before Friday, Sept. 27 and the October 8 hearing on summary judgment, assessment of damages and plaintiff's motion to amend, shall proceed as previously scheduled. So ordered. Judge: Barry-Smith, Hon. Christopher K		
09/09/2019	Kathleen Trahan's Memorandum Re: Status	77	 Image
09/13/2019	Petitioner Kathleen Trahan's Request for recusal of superior court judge Pursuant to c 211 ss3 Petitioner's renewd request for recusal of superior court judge Pursuant to c 211 ss3	78	 Image
















<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/16/2019	Plaintiff Kathleen Trahan's EX PARTE Motion to amend attachment	79	 Image
09/16/2019	Affidavit of Steven E. Framer	79.1	 Image
09/26/2019	General correspondence regarding NOTICE OF DOCKET ENTRY: You are hereby notified that on September 24, 2019, the following was entered on the docket of the above referenced case: ORDER: as on file. (Budd, J.)	80	 Image
09/27/2019	Event Result:: Rule 56 Hearing scheduled on: 10/08/2019 02:00 PM Has been: Canceled For the following reason: By Court prior to date Hon. Christopher K Barry-Smith, Presiding Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
09/27/2019	The following form was generated: Notice to Appear Sent On: 09/27/2019 10:54:29		
09/30/2019	Defendant Stanley J Pelczar's EMERGENCY Motion to Stay Discovery	81	 Image
10/01/2019	Defendant Stanley J Pelczar's EMERGENCY Motion to dismiss Plaintiff's Complaint For Continued Disregard Of Court Orders Or, In The Alternative, Extend The Discovery Deadline Thirty Days, Reset The Briefing Schedule And Hearing Date And Award Attorney's Fees	82	 Image
10/01/2019	Opposition to defendant's emergency motion to dismiss. filed by Kathleen Trahan	83	 Image
10/01/2019	Endorsement on Motion to dismiss plaintiff's complaint for continued disregard of Court orders or, in the alternative, extend the discovery deadline thirty days, reset the briefing schedule and hearing date and award attorneys fees. (#82.0): Other action taken This motion will be heard on October 8, 2019 at 2:00 p.m. in the "H" Session in Middlesex County. Previously scheduled for that date in this case were plaintiff's (i) motion for summary judgment on defendant's remaining counterclaims, (ii) motion for assessment of damages following partial summary judgment, and (iii) motion to amend complaint to add c. 93A claims. Those motions will not go forward on October 8th because the discovery ordered in connection with those proceedings (namely, a three hour deposition of plaintiff) has not yet occurred, despite several orders and plaintiff counsel's discussion with the Court on September 4, 2019. Judge: Barry-Smith, Hon. Christopher K		 Image
10/07/2019	Opposition to Defendant's Motion to Dismiss and Plaintiff's Request for Alternative Relief filed by Kathleen Trahan	84	 Image
10/08/2019	Event Result:: Motion Hearing scheduled on: 10/08/2019 02:00 PM Has been: Rescheduled For the following reason: Request of Defendant Hon. Christopher K Barry-Smith, Presiding Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
10/09/2019	Event Result:: Motion Hearing scheduled on: 10/09/2019 03:00 PM Has been: Held as Scheduled Hon. Christopher K Barry-Smith, Presiding Staff: Dia S Roberts-Tyler, Assistant Clerk Magistrate		
10/09/2019	Plaintiff, Reach & Apply Defendant(s) Kathleen Trahan's EMERGENCY Motion for Restraining Order and Amendment of Attachment (Filed In Court)	85	 Image

















<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/18/2019	<p>ORDER: order: October 17, 2019.</p> <p>Trahan v. Pelczar, Civil Action No. 1781cv2356.</p> <p>By orders dated May 8, June 27, July 29 and Sept 4, 2019, the court required the plaintiff to appear for a deposition, not to exceed three hours, so that the court could thereafter hear summary judgment motions with respect to any remaining claims or counterclaims in the case. Most recently, at a hearing on October 9, 2019, the court ordered that the previously-ordered discovery occur not later October 18, 2019 or the plaintiff risked having her case dismissed. Upon reflection, because the court has already awarded plaintiff summary judgment on liability as to her contract claim, the more appropriate remedy in the event plaintiff's noncompliance continues is to default plaintiff as to defendant's counterclaims, which would then be followed by an assessment of damages (if any) on the counterclaims.</p> <p>Counsel for Trahan, by way of ex parte communication to the clerk, has asked for additional guidance on the scope of the depositions. To promote the likelihood that plaintiff conforms to court orders and to avoid unnecessary arguing about the scope of the plaintiff's deposition, the court reiterates that the deposition of plaintiff is limited to three hours, not including time attributable to attorney objections and discussions, and that the time limit is the only court-imposed limit on the plaintiff's deposition. Although the court expects that defendant's counsel will not repeat questions and topics already covered at plaintiff's November 20, 2018 deposition, the court continues to expressly decline to impose restrictions on the deposition beyond the three hour time limit, for reasons discussed below.</p> <p>Before issuing this order, I have reviewed carefully the transcript of plaintiff's deposition which occurred on November 20, 2018. My review of that transcript supports my approach to discovery in this case, reflected in my orders beginning May 8th, namely, that defendant could obtain limited discovery prior to hearing summary judgment on his counterclaims. First, the November 20 deposition transcript confirms that, although it lasted 2.5 hours, the deposition did not cover the entire scope of the counterclaims but was focused on certain issues, including plaintiff's view of contract damages and the disparagement counterclaim which, at that time, was the linchpin of defendant's (unsuccessful) argument that plaintiff's disparagement of him was a material breach of the settlement contract that excused his nonpayment. Indeed, on at least five occasions, plaintiff's counsel argued on the record that the deposition was limited to "disparagement," often as he instructed the plaintiff not to answer questions concerning other aspects of the case. See Transcript, at pp. 50, 53, 54, 70-71, 74, 84-85, 89. Second, a review of the transcript captures precisely why I established a time limit on the deposition rather than attempt to identify parameters with reference to subject matters or claims or counterclaims. The prior deposition makes plain that whatever parameters I might establish would likely result in objections, instructions not to answer, and long arguments between counsel. For objections and counsel's instructions to plaintiff not to answer questions counsel viewed as beyond the scope of the first deposition, see Transcript at 42-43, 47, 59, 62, 68, 73. In such circumstances, I view the time limit as the only workable approach to controlling the scope of discovery.</p> <p>Judge: Barry-Smith, Hon. Christopher K</p>	86	 Image
11/08/2019	Petitioner Kathleen Trahan's Motion to amend reach and apply attachment (pursuant to M.R.A.P. rule 15)	87	 Image
11/08/2019	Plaintiff, Reach & Apply Defendant Kathleen Trahan's EMERGENCY Motion for restraining order and amendment of attachment.	88	 Image
11/22/2019	Opposition to defendant's request for extension to file memoranda. filed by Kathleen Trahan	89	 Image
02/06/2020	Plaintiff Kathleen Trahan's EMERGENCY Motion to Amend Escrow Payment to Defendant	91	 Image
02/06/2020	Notice of docket entry received from Appeals Court You are hereby notified that on February 4, 2020, the following was entered on the docket of the above referenced case: JUDGMENT after Rescript from the SJC for the Commonwealth.	92	 Image
02/07/2020	ORDER: SCHEDULING ORDER: (which see 2 pages Dated: Feb.6, 2020 and copies mailed 2/7/2020	90	 Image
02/11/2020	Plaintiff Kathleen Trahan's Motion to pursuant to S.J.C. Rule 3:07 and Mass. R. Prof.C.3.3(a)(1) Requiring Counsel For Defendant To Redress Plaintiff's Losses	93	 Image
02/19/2020	Affidavit filed by Plaintiff Kathleen Trahan in support of amendment of escrow payments Ref #91	94	 Image
03/09/2020	Plaintiff Kathleen Trahan's EMERGENCY Request for rule 20 case management conference and / or amendment of scheduling order	95	 Image
03/09/2020	Plaintiff Kathleen Trahan's Motion to strike Emergency motion to dismiss filed by defendant on September 26, 2019	96	 Image
03/09/2020	Affidavit of Steven E. Kramer in support of motion to strike pleading	96.1	 Image
03/09/2020	Plaintiff Kathleen Trahan's EMERGENCY Motion to amend escrow payment to defendant	97	 Image
















<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/03/2020	Party(s) file Stipulation and Order (scheduling order) Applies To: Trahan, Kathleen (Plaintiff); Pelczar, Stanley J (Defendant)	98	
04/06/2020	Plaintiff Kathleen Trahan's Motion for Summary Judgment on Defendant's Counterclaims	99	 Image
04/06/2020	Kathleen Trahan's Memorandum of Law in Support of Summary Judgment on Defendant's Counterclaims	99.1	 Image
04/06/2020	Plaintiff Kathleen Trahan's Statement of material facts as to which there is no Genuine Factual Dispute	99.2	 Image
04/06/2020	Plaintiff Kathleen Trahan's Motion for Assessment of Damages	100	 Image
04/06/2020	Plaintiff Kathleen Trahan's Motion to Amend Complaint to Add Ronald Dunbar as Party Defendant and Assert Claims Against Him for Misrepresentation and Violation of C. 93A S11	101	 Image
04/06/2020	Kathleen Trahan's Memorandum of Law in Support of Motion to Add Ronald Dunbar as a Party Defendant and Assert C. 93A S11 Claim	101.1	 Image
04/06/2020	Plaintiff Kathleen Trahan's Motion in Pursuant to S.J.C. Rule 3:07 and Mass. R.Prof.C.3.3(a)(1) Requiring Counsel for Defendant to Redress Plaintiff's Losses	102	 Image
04/06/2020	Plaintiff Kathleen Trahan's Motion for Leave to Obtain Limited Discovery	103	 Image
04/06/2020	Plaintiff Kathleen Trahan's Petition for Attorneys' Fees	104	 Image
04/06/2020	Affidavit of Steven E. Kramer in Support of Petition for Attorneys' Fees	104.1	 Image
04/06/2020	Affidavit of Steven E. Kramer Concerning Service of Oppositions to Pending Motions	105	 Image
04/06/2020	Kathleen Trahan's Memorandum of Law in Support of Motion to Amend Complaint to Add C. 93A S11 Claim Against Defendant	106	 Image
04/06/2020	Affidavit of compliance with Superior Court Rule 9A Applies To: Kramer, Esq., Steven E (Attorney) on behalf of Trahan, Kathleen (Plaintiff)	107	 Image
04/09/2020	Affidavit of Steven Kramer	108	 Image
04/10/2020	Kathleen Trahan's Memorandum of Law on Pending COV-19 Rules	109	 Image
04/29/2020	Endorsement on Memorandum of Law on Pending COV-19 Rules (#109.0): Other action taken The Covid-19 pandemic has interrupted the schedule set forth in my February 6, 2020 scheduling order and the parties disagree about the intersection of deadlines and the SJC's Order related to Covid-19, so I will provide the following guidance. 1) I have received Ms. Trahan's motions and other documents contemplated in my Feb. 6 order (Pleadings 99-107). 2) Defendant shall respond to all such filings on before May 18, 2020, by filing directly with the court. Compliance with Rule9A will only serve to further confuse the situation. 3) If plaintiff would like to reply to any of defendant's pleadings, she may file any reply with the court by May 26, 2020. 4) A telephonic hearing on all motions will be held on or after May 27, 2020, to be scheduled by the clerk of the L2 session. The parties shall email the clerk [Beatriz.van-meek@jud.state.ma.us] the week of May 18th to inquire when & how the telephonic conference will be set up. 5) Even if further orders are issued by the SJC, these deadlines will not be change absent order of this court. Dated: 4/28/2020 Judge: Barry-Smith, Hon. Christopher K		 Image
05/05/2020	General correspondence regarding Submission by plaintiff of "Exhibit A Settlement Fund Payments and Attorneys Fees Owed"	110	 Image
05/22/2020	Kathleen Trahan's Reply Memorandum to Defendant's "Omnibus" Pleadings	111	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/01/2020	The following form was generated: Notice to Appear Sent On: 06/01/2020 15:21:03		
06/01/2020	The following form was generated: Notice to Appear Sent On: 06/01/2020 15:22:51		
06/09/2020	The following form was generated: Notice to Appear Sent On: 06/09/2020 15:44:43		
06/09/2020	The following form was generated: Notice to Appear Sent On: 06/09/2020 15:49:27		
06/24/2020	Matter taken under advisement: Motion Hearing scheduled on: 06/24/2020 10:00 AM Has been: Held - Under advisement Comments: Via Zoom Hon. Christopher K Barry-Smith, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
06/29/2020	Plaintiff Kathleen Trahan's Motion in Pursuant to M.G.L. c.231 S6F	112	 Image
07/10/2020	Defendant Stanley J Pelczar's Motion to strike plaintiff's motion pursuant to GL c 231, sec 6F for failure to comply with Superior Court Rule 9A	113	 Image
07/14/2020	Affidavit of Steven E. Kramer	114	 Image
07/14/2020	Opposition to defendant's motion to strike filed by Applies To: Kramer, Esq., Steven E (Attorney) on behalf of Trahan, Kathleen (Plaintiff)	114.1	 Image
08/12/2020	Plaintiff Kathleen Trahan's Motion for Entry of Separate and Final Judgment on contract claim Rule 54(b)	113.1	 Image
08/19/2020	Plaintiff Kathleen Trahan's EMERGENCY Motion to Submit Supplemental Exhibit	115	 Image
08/21/2020	Endorsement on Motion for Submit Supplemental Exhibit - EMERGENCY - (#115.0): DENIED without prejudice as it does not satisfy 9A Judge: Doolin, Hon. Michael		 Image
08/25/2020	Endorsement on Motion to Amend Escrow Payment to Defendant (#97.0): DENIED Dated: August 24, 2020 and notices mailed 8/25/20 Judge: Doolin, Hon. Michael		 Image
08/25/2020	MEMORANDUM & ORDER: DECISION AND ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT MOTION TO AMEND COMPLAINT, PETITION FOR ATTORNEY'S FEES AND OTHER MOTIONS. (which see 30 pages) SO ORDERED; Dated: August 24, 2020 and copies mailed 8/25/20 Judge: Barry-Smith, Hon. Christopher K	116	 Image
08/27/2020	Plaintiff Kathleen Trahan's Motion for reach and apply attachment	117	 Image
08/27/2020	Plaintiff Kathleen Trahan's Motion for reconsideration on petition for attorney's fees	118	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/16/2020	JUDGMENT entered on this date.: Summary Judgment MRCP 56 After Judicial Finding Presiding: Hon. Christopher K Barry-Smith Judgment For: Kathleen Trahan Judgment Against: Stanley J Pelczar Terms of Judgment: Interest Begins: 12/31/2016 Jdgmnt Date: 09/16/2020 Interest Rate: .12 Daily Interest Rate: .000329 Damages: Damage Amt: 81511.64 Crt Ord Atty Fee: 44735.47 Judgment Total: 162,584.59 Further Orders: It is further ORDERED and DECLARED that i) Stanley Pelczar has defaulted under the Settlement Agreement and accordingly the total amount owed to Kathleen Trahan by Stanley Pelczar is \$375,000, increased for the original amount of \$275,000. ii) Pursuant to the Settlement Agreement, the increased amount owed will be reflected in the quadrennial catch-up payments, which will now be in the amount of \$45,000, due at the close of 2016, 2020, 2024, 2028 and the end of the contract in 2032. Annual payments remain unchanged at \$7,500 per year. iii) Stanley Pelczar is obligated under the Settlement Agreement to pay Kathleen Trahan \$7,500 on or before December 31st of every year from 2020 through 2032, and also pay to Kathleen Trahan \$45,000 on or before December 31, 2020, 2024, 2028 and 2032.	119	 Image
09/25/2020	Plaintiff's Notice of intent to file motion to Alter and Amend Pursuant to Rule 59(e) Applies To: Trahan, Kathleen (Plaintiff)	120	 Image
09/25/2020	Plaintiff Kathleen Trahan's Motion to Alter and Amend Judgment	121	 Image
10/09/2020	Opposition to plaintiff's motion to alter and amend judgment filed by Stanley J Pelczar	122	 Image
10/09/2020	Reply/Sur-reply Plaintiff's reply memorandum Applies To: Trahan, Kathleen (Plaintiff)	123	 Image
10/13/2020	Notice of Appeal Filed by Stanley J. Pelczar: Pursuant to Rule 3 and 4 of the Massachusetts Rules of Appellate Procedure, Defendant, Stanley J. Pelczar, hereby filed this Notice of Appeal. The Appellant seeks appellate review of the judgment entered against Stanley J. Pelczar dated September 16, 2020. Applies To: Dunbar, Jr., Esq., Ronald W (Attorney) on behalf of Pelczar, Stanley J (Defendant)	124	 Image
10/21/2020	Plaintiff Kathleen Trahan's EMERGENCY Motion to dismiss notice of appeal	125	 Image
11/13/2020	ORDER: ORDER: Dated: October 28, 2020 (See Scan)(Sent Orders by mail) Judge: Barry-Smith, Hon. Christopher K	126	 Image
11/16/2020	Kathleen Trahan's Reply Memorandum (*supplemental reply memorandum of law)	127	 Image
11/16/2020	Petitioner Kathleen Trahan's Request for Relief Pursuant to c. 231 118, Paragraph 1, of, in the Alternative, Pursuant to Appellate Rule 2	129	 Image
11/18/2020	Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY: Please take note that on November 18, 2020 the above referenced matter has been entered on the single justice docket of the Appeals Court.	130	 Image
11/19/2020	Defendant Stanley J Pelczar's Notice of appeal	128	 Image
11/23/2020	Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTEY: Please take note that on November 18, 2020, the above referenced matter has been entered on the single justice docket of the Appeals Court.	131	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/27/2020	<p>Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY</p> <p>Please take note that, with respect to the Petition pursuant to G.L. c. 231, s. 118 with attachments, filed by Kathleen Trahan [Inadvertently not entered on the docket as filing was received on 11/16/2020]. (Paper #1),</p> <p>on November 27, 2020, the following order was entered on the docket of the above-referenced case:</p> <p>RE#1: The plaintiff, has filed a petition pursuant to G.L. c. 231, s. 118, first para., seeking review of an order denying her motion for reconsideration. As final judgment has entered, I do not have jurisdiction to consider the petition. See Gibbs Ford, Inc. v. United Truck Leasing Corp., 399 Mass. 8, 10-11 (1987) (a single justice may not entertain a petition, pursuant to G.L. c. 231, s. 118, first para., subsequent to entry of a final judgment or decree). Therefore, the petition is dismissed. The plaintiff's request for relief pursuant to Mass. R.A.P. 2 is denied. So ordered. (Singh, J.). *Notice/Attest/Barry-Smith, J</p> <p>EMAIL NOTIFICATION</p>	132	 Image
11/27/2020	<p>Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY</p> <p>Please take note that, with respect to the Motion to enjoin further payments, filed by Kathleen Trahan. (Paper #3),</p> <p>on November 27, 2020, the following order was entered on the docket of the above-referenced case:</p> <p>RE#3: As the plaintiff's petition has been dismissed. The plaintiff's motion to enjoin further payments pending that petition is denied. (Singh, J.). *Notice.</p> <p>EMAIL NOTIFICATION</p>		
03/17/2021	<p>Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY: Please take note that on March 17, 2021, the following entry was made on the docket of the above-referenced case: ORDER: Subsequent to the entry of my order dismissing the plaintiff's petition, the plaintiff filed a motion pursuant to Rule 60 for relief from my order.</p>	133	 Image
04/12/2021	<p>Plaintiff's Notice of Appeal Pursuant to Appellate Rules 3 and 4, Plaintiff, Kathleen Trahan, appeals from a final judgment entered on September 16, 2020 based upon a decision and order issued by Judge Barry-Smith on August 24, 2020 and from his denial of Plaintiff's Motion for Reconsideration issued on October 28, 2020.</p> <p>Applies To: Kramer, Esq., Steven E (Attorney) on behalf of Trahan, Kathleen (Plaintiff)</p>	134	 Image
04/12/2021	Plaintiff's Rule 65.3 Complaint for Civil Contempt	134.1	 Image
04/16/2021	Defendant Stanley J Pelczar's EMERGENCY Motion to strike plaintiff, Kathleen Trahan's , notice of appeal as untimely	135	 Image
04/19/2021	Opposition to defendant's emergency motion to strike appeal filed by Kathleen Trahan	136	 Image
04/21/2021	<p>Reply/Sur-reply</p> <p>Applies To: Pelczar, Stanley J (Defendant)</p> <p>to the plaintiffs opposition to emergency motion to strike plaintiff's notice of appeal as untimely</p>	137	 Image
04/22/2021	General correspondence regarding letter received from Steven E. Kramer Esq.	138	 Image
04/22/2021	Plaintiff Kathleen Trahan's EMERGENCY Motion for leave to file affidavit pursuant to superior court rule 9A(a)(3)	139	 Image
04/22/2021	Affidavit of of Steven E. Kramer	139.1	 Image
04/23/2021	Plaintiff Kathleen Trahan's EX PARTE Motion for attachment	140	 Image
04/29/2021	Plaintiff Kathleen Trahan's EMERGENCY Motion of Hearing	141	 Image
05/05/2021	<p>Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY: Please take note that, with respect to the Motion to Amend to Amend docket entries filed for Kathleen Trahan by Attorney Steven Kramer. (Paper #19), on May 5, 2021</p>	142	 Image
05/07/2021	Kathleen Trahan's Memorandum in support of attachment , civil contempt and dismissal of emergency motion to strike appeal	143	 Image
05/12/2021	Kathleen Trahan's Memorandum in opposition to emergency Motion to Strike Appeal Plaintiff	144	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/14/2021	Plaintiff Kathleen Trahan's EMERGENCY Motion for reconsideration of motion to amend to add 93A claims	145	 Image
05/17/2021	Plaintiff Kathleen Trahan's EMERGENCY Motion for relief from judgment 60(b)(6)	146	 Image
05/17/2021	Affidavit filed by Plaintiff Kathleen Trahan in support of plaintiff's Rule 60 (b) (6)	146.1	 Image
	Applies To: Kramer, Esq., Steven E (Attorney) on behalf of Trahan, Kathleen (Plaintiff)		
06/03/2021	Notice of assembly of record sent to Counsel	147	 Image
06/03/2021	Notice to Clerk of the Appeals Court of Assembly of Record	148	 Image
06/04/2021	Opposition to omnibus to Plaintiff's (1) emergency motion for relief from judgment -rule 60(b)(6), (2) emergency motion for reconsideration of motion to amend complaint to add 93A claims and (3) ex parte motion for attachment filed by Stanley J Pelczar	149	 Image
06/07/2021	Appeal entered in Appeals Court on 06/03/2021 docket number A.C. 2021-P-0493	150	 Image
06/07/2021	Defendant Stanley J Pelczar's EMERGENCY Motion to strike plaintiff, Kathleen Trahan's notice of appeal as untimely.	150.1	 Image
06/07/2021	Kathleen Trahan's Memorandum in opposition to emergency motion to strike appeal plaintiff.	150.2	 Image
06/07/2021	Plaintiff Kathleen Trahan's Response to defendant's "omnibus" opposition.	150.3	 Image
06/08/2021	Endorsement on Motion for Hearing (#141.0): DENIED Request for hearing DENIED in light of my decision on pending motions of 06/08/2021. Dated: June 8, 2021		 Image
	Judge: Barry-Smith, Hon. Christopher K		
06/08/2021	ORDER: ORDER: The parties, Plaintiff Kathleen Trahan and Defendant Stanley Pelczar, entered into a settlement agreement to resolve a lawsuit Trahan filed against Pelczar in 2012. The settlement agreement, as now implemented, required Pelczar to pay Trahan \$375,000, but through annual and quadrennial payments over the course of twenty years. Pelczar has breached nearly every payment obligation under the settlement agreement, as those obligations came due. Trahan commenced this lawsuit for breach of the settlement agreement in August 2017. After years of inexplicably inefficient litigation, on August 24, 2020, I granted summary judgment to Trahan, assessed her damages at \$81,511,364, and allowed her petition for attorney's fees in the amount of \$44,735.47. I also issued a declaratory judgment concerning Pelczar's obligations under the parties' contract. That declaration set forth, among other things, Pelczar's obligation to make two payments on or before December 31, 2020, in the amounts of \$7,500 and \$45,000. Totaling \$52,500. Following my summary judgment decision, the clerk entered judgment on September 16, 2020. With statutory interest, the judgment awarded Trahan, at that time, \$162,584.59. After my order of August 24, 2020, Trahan's attorney filed a variety of motions urging me to reconsider certain rulings and deliver to his client an even more favorable judgment. By order dated October 28, 2020, I addressed Trahan's motions by: (Which See)" Trahan's notice of appeal was untimely, and she has pointed to no authority suggesting that her effort to improperly continue a dismissed interlocutory appeal extended her deadline for filing a notice of appeal. Accordingly, Pelczar's motion to strike Trahan's notice of appeal is ALLOWED. Dated: June 8, 2021	151	 Image
06/09/2021	Plaintiff Kathleen Trahan's EMERGENCY Motion of allowance of defendant's motion to strike notice of appeal	152	 Image
06/09/2021	Plaintiff Kathleen Trahan's EMERGENCY Motion for reconsideration of allowance of defendant's motion to strike notice of appeal	153	 Image
06/10/2021	Endorsement on Motion of allowance of defendant's motion to strike notice of appeal. Treating this filing as a motion to reconsider my June 8, 2021 Order, the motion is (#152.0): DENIED Please note that my June 8, 2021 Order addressed and denied the plaintiff's request to commence civil contempt proceedings and for attachment. (Dated June 9, 2021)		
	Judge: Barry-Smith, Hon. Christopher K		
06/18/2021	Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY: Please take note that, with respect to the Motion to stay under MRAP 6(A) filed for Kathleen Trahan by Attorney Steven Kramer. (Paper #6), on June 17, 2021	154	 Image
08/10/2021	Defendant Stanley J Pelczar's EMERGENCY Motion to include the "defendant, Stanley J. Pelczar's, omnibus opposition to plaintiff's (1) motion to amend complaint to add 93A claim against opposing counsel, (2) petition for attorney's fees, (3) motion to amend escrow order and (4) motion for leave to obtain limited discovery" as part of its record appendix on appeal.	155	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/11/2021	Kathleen Trahan's Memorandum Memorandum in Support of Excluding Defendant's Omnibus Opposition from the Record Appendix	156	 Image
08/12/2021	Plaintiff Kathleen Trahan's EMERGENCY Motion for Attachment on Reach and Apply Funds	157	 Image
08/16/2021	Endorsement on Motion to Include the Defendant Opposition to Plaintiff Motion to Amend (#155.0): ALLOWED After review, Dated: August 11, 2021 Judge: Doolin, Hon. Michael		 Image
08/18/2021	Endorsement on Motion for an Attachment on Reach and Apply Funds (#157.0): DENIED This Motion is Denied because there is no certificate reflecting service on other parties and because no emergency is identified and therefore the moving party must confirm to Superior Ct. R.9A. Further, if the parties' appeal has been docketed, I am without jurisdiction to hear this Motion. August 16, 2021 and notices mailed 8/18/21 Judge: Doolin, Hon. Michael		 Image
11/09/2021	Plaintiff Kathleen Trahan's EMERGENCY Motion for Clarification of Reach and Apply Payments	158	 Image
11/09/2021	Plaintiff Kathleen Trahan's EMERGENCY Motion for clarification of reach and apply payments.	159	 Image
11/10/2021	Affidavit of Steven E. Kramer	158.1	 Image
11/12/2021	Opposition to plaintiffs emergency motion for clarification of reach and apply payments filed by Stanley J Pelczar	160	 Image
11/12/2021	Affidavit of Steven E. Kramer in Support of C. 211 S3 Petition	161	 Image
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Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed by Court Finding	09/16/2020	Barry-Smith, Hon. Christopher K

LOWER COURT RULING

the parties' contract that would excuse Pelczar from performance; and ii) even if it did not qualify as a material breach, if Pelczar can prove breach and damages, those damages could decrease the amount Pelczar owes Trahan for breach of contract. I also attempted to establish a schedule so that this "collection matter" would be adjudicated promptly.

In retrospect, because my September 2018 decision focused on Pelczar's disparagement counterclaim, I unintentionally invited piecemeal litigation. After allowing discovery, I issued a second summary judgment decision on February 15, 2019, granting Trahan summary judgment as to Pelczar's counterclaim for disparagement and holding there was no material breach of contract that excused Pelczar from his payment obligations. However, Trahan's summary judgment briefing had not provided a basis to summarily adjudge Pelczar's other counterclaims—for breach of the covenant of good faith and fair dealing and interference with contractual relations. Therefore, I held a scheduling conference on March 5, 2019, in order to "(a) determine the disposition of [Pelczar's] counterclaims either by additional motions or trial and (b) establish a schedule for assessment of damages and attorney's fees due to Trahan." Decision on Further Summary Judgment (Feb. 15, 2019). In that decision, I also allowed Trahan's motion to reach and apply monthly payments to Pelczar from his ex-wife, ordering that the monthly payments of \$13,194.64 be paid to Attorney Ronald Dunbar, Pelczar's counsel, and that \$5,000 may be paid to Pelczar and the balance of \$8,194.64 monthly be held in escrow by Attorney Dunbar pending further order of the court.

At the March 5, 2019 scheduling conference, I was persuaded by Pelczar's counsel that additional discovery should precede any further adjudication, and I eventually allowed a deposition of Trahan, not to exceed three hours. See Order (May 8, 2019). Although I had twice signaled that Trahan was likely to obtain judgment and that disposition should be reached as

Although Trahan's counsel did not cite authority to support his view of enforcing the contract, nothing prevented him from pursuing that position; however, he cannot also contend that Pelczar's litigation tactics unfairly delayed his collection efforts. Trahan's approach to this litigation, both at the outset and then in connection with my discovery orders, seriously delayed the outcome Trahan sought, and did so more than Pelczar's litigation conduct. Given that context, in this case Trahan's effort to allege unfair or deceptive conduct based on Pelczar's litigation conduct is futile.

2. The c. 93A Claim Against Attorney Dunbar

Similarly, the allegations against Attorney Dunbar are insufficient to support a c. 93A claim and are thus futile. "[T]he practice of law constitutes trade or commerce for purposes of liability under c. 93A." *Baker v. Wilmer Cutler Pickering Hale & Dorr LLP*, 91 Mass. App. Ct. 835, 850 (2017) (internal quotations omitted), quoting *Brown v. Gerstein*, 17 Mass. App. Ct. 558, 570 (1984). A party to litigation or his attorney can incur c. 93A liability through unfair and deceptive acts if he has a commercial relationship with the plaintiff or if his actions interfere with trade or commerce. *First Enters. v. Cooper*, 425 Mass. 344, 347 (1997), citing *Arthur D. Little, Inc. v. East Cambridge Sav. Bank*, 35 Mass. App. Ct. 734, 743 (1994). However, contact through litigation alone does not create a commercial relationship. *Id.* at 743. Likewise, "the mere filing of litigation does not of itself constitute trade or commerce." *Milliken & Co. v. Duro Textiles, LLC*, 451 Mass. 547, 564 (2008), quoting *Cooper*, 425 Mass. at 347.

Deceptive or misleading acts taken by attorneys during litigation that was generated by a pre-existing commercial relationship can be the basis for c. 93A claims. See *Pacific Fin. Corp. v. Brauer*, 57 Mass. App. Ct. 407, 418-419 (2003) (finding that an attorney who inappropriately diverted a non-client's funds that he was holding in escrow as part of a commercial transaction

and then filed a trustee process action based on misleading and untruthful affidavits to secure those funds was liable under c. 93A). However, absent a commercial relationship that predates litigation, even misleading and untruthful conduct in litigation cannot form the basis of a c. 93A claim so long as an attorney does not “inject himself into trade or commerce.” See *Cooper*, 425 Mass. at 348 (holding that an attorney who pursued a baseless claim against his clients’ former business partners, based partially on a false affidavit, was not liable under c. 93A because he had not interfered with commerce) (internal quotations removed).

Here, Attorney Dunbar has no pre-existing business relationship with Trahan nor did his actions during this litigation interfere with trade or commerce. His only contact with Trahan has been in the context of litigation – contact that is legally insufficient to establish a commercial relationship and thus a basis for a c. 93A claim. Even if Attorney Dunbar did make misleading or deceptive statements during litigation, an allegation he vigorously denies, such claims are insufficient to allege interference with trade or commerce under the standard set by *Cooper*. There is no plausible suggestion that Attorney Dunbar had a commercial relationship with Trahan or that any act taken by Attorney Dunbar in the course of this litigation interfered with trade or commerce. This claim is futile.

D. Plaintiff’s Petition for Attorney’s Fees and Costs

The Settlement Agreement provides that “[t]he prevailing party shall be entitled to attorney’s fees and costs relating to any action to enforce this agreement.” Settlement Agreement, ¶ 22. Trahan seeks \$154,433.82 in attorney’s fees and costs and Attorney Kramer has submitted his billing records from 2017 through spring of 2020 to show the work for which he seeks compensation. Pelczar acknowledges that his contract with Trahan authorizes the recovery of attorney’s fees but argues that, in the circumstances of this litigation, the fee award

monthly payments and required \$8,194.64 to be held in escrow by Attorney Dunbar to secure Plaintiff's recovery even though Defendant was allowed to continue to receive \$5,000 per month. By that time, Defendant had already received in excess of \$250,000 in monthly payments from the note proceeds since they began in August 2017.

B. Discovery

Commencing when the lawsuit was filed in August 2017, Attorney Dunbar insisted that adjudication of Plaintiff's contract claim and his counterclaims would require considerable discovery. The tracking order deadline for discovery was June 4, 2018 (SA 42). Attorney Dunbar, however, failed to propound any discovery requests until June 11, 2018 (SA 49). Nevertheless, in an opposition he filed to Plaintiff's Third Motion for Summary Judgment in July 2018, Attorney Dunbar stated as follows:

"After Judge Inge denied summary judgment on March 5, 2018, Trahan has refused to engage in discovery." (SA 46)

Attorney Dunbar propounded no discovery requests between March 5th and June 10, 2018.

In order to resolve an ambiguity in paragraph 23 of the 2012 Settlement Agreement (SA 10), the parties

appeared on May 24, 2018 before Judge Donatelle in Suffolk Superior Court (SA 48). At the conclusion of the hearing, Plaintiff requested security for the amount owed at that time. The Court deferred a decision on the request because Attorney Dunbar stated at the hearing that since the ambiguity in paragraph 23 had been resolved, he would provide a settlement proposal (SA 48). Several days later, instead of a settlement agreement, Attorney Dunbar propounded his first discovery requests, including notices of deposition for the Plaintiff and Reach and Apply Defendant (SA 49). Soon thereafter, he forwarded a subpoena to Verizon Wireless seeking Plaintiff's phone records (SA 51).

Discovery in Superior Court must be conducted in accordance with applicable tracking order requirements issued at the commencement of the litigation. Standing Order 1-88 includes a discovery tracking order deadline which applied to this litigation (Addendum). The order is not a "frivolous piece of paper, idly entered which can be cavalierly disregarded by counsel without peril ... Disregard of Standing Orders undermines the Court's ability to control its docket, disrupts the course of the litigation and rewards the

indolent and the cavalier." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 610 (9th Cir. 1992). If a litigant seeks to extend the deadline, the request must be supported by "good cause." Whether "good cause" exists depends primarily on the movant's diligence. Coleman v. Quaker Oats Company, 232 F.3d 1271, 1294-1295 (9th Cir. 2000).

Furthermore, the Justices of the Superior Court have designated the tracking order an "attack on excessive delay and costs of court proceedings ... to secure the just, speedy and inexpensive determination of every action and to manage the pace of litigation," (paragraph A, General Considerations, Standing Order 1-88) (Addendum).

Judge Barry-Smith alluded to the above requirements in his September 11, 2018 order. In response to Defendant's late requests to take the two depositions after the June 4th deadline, the Court stated:

"These proceedings do not appear to warrant discovery extending beyond Trahan and Pelczar and discovery should be limited in scope and on a prompt timeline." (SA 100)

Subsequent to the two depositions which Attorney Dunbar had noticed in 2018 (Attorney Dunbar

erroneously stated in his brief that the two depositions occurred in 2019 when Judge Barry-Smith issued his escrow order), Plaintiff's third summary judgment motion was pending. It had been served on the Defendant in compliance with Rule 9A. The only genuine factual issue Attorney Dunbar had alleged by that time had been the now resolved ambiguity in paragraph 23 of the Settlement Agreement and purported "disparagement" by the Plaintiff (SA 99).

In his February 15, 2019 decision and order, Judge Barry-Smith dismissed the "disparagement" allegation and made the following observation, with respect to the status of the case and Plaintiff's likely recovery:

"For months, Pelczar has ignored his plain obligations under the Settlement Agreement, extended the litigation through counterclaims and contract defenses which thus far have proven wholly meritless, while receiving tens of thousands of dollars from his divorce settlement in monthly installments to which -- given Pelczar's history with Trahan -- may well be the only source from which Trahan may ever recover from Pelczar."

Nevertheless, on March 5, 2019, Judge Barry-Smith held a scheduling conference at which Attorney Dunbar alleged new "additional genuine issues of material fact" to support his request for additional discovery

on his counterclaims. Over a year later, in his August 24, 2020 decision, Judge Barry-Smith described what transpired at the March 5, 2019 conference:

"At the March 5, 2019 scheduling conference, I was persuaded by Pelczar's counsel that additional discovery should precede any further adjudication and I eventually allowed the deposition of Trahan not to exceed three hours." (SA 116)

The May 8, 2019 order did not limit discovery to one deposition of Trahan. It reads as follows:

"The parties may conduct discovery concerning those counterclaims, and absent leave of court, discovery shall be limited to: (a) not more than ten requests for production of documents and not more than five interrogatories between Pelczar and Trahan (to the extent such requests have not already occurred); and (b) depositions of Trahan, Pelczar and Reach and Apply Defendant Nancy Pelczar with no deposition to exceed three hours' duration. Any deposition subpoena to Nancy Pelczar may request production of documents as well. Beyond these items, no discovery shall be issued absent leave of court ..." (SA 105)

In his same August 24th Decision and Order, Judge Barry-Smith admitted that his order had "invited piecemeal litigation." (SA 116) In fact, the May 8th discovery order not only invited piecemeal litigation, it substantially diminished Plaintiff's opportunity for a meaningful recovery in this case. The order failed to acknowledge the expiration of the tracking order discovery deadline and Judge Barry-Smith did not

require Attorney Dunbar to show any "good cause" in order to extend the deadline and seek additional discovery. Essentially, a year after the June 4, 2018 deadline had expired, Attorney Dunbar was permitted to initiate substantial additional extensive discovery without having provided any reasons for not having done so prior to that time.

Plaintiff vigorously objected to the discovery extension and filed substantive oppositions. Specific case law and the tracking order were cited, including precedents applicable to discovery requested during the pending Summary Judgment Motions.

Judge Barry-Smith, however, labeled Plaintiff's counsel's oppositions to the extensive discovery order "obstreperous, a waste of judicial resources and redundant." (SA 108, SA 109, SA 110) Due to the severity of his accusations, Plaintiff eventually sought his recusal due to fear of bias and prejudice in the eventual damage assessments. Most importantly, Judge Barry-Smith refused to acknowledge that the significant delay caused by the extensive discovery order would likely result in the loss of another \$40,000-50,000 to Plaintiff of the assets Judge Barry-

Smith himself had identified as her likely only source of recovery.¹

The dispute between Plaintiff's counsel and the Court extended for several months. During the pendency of the recusal proceedings, Plaintiff's counsel forwarded correspondence to Judge Barry-Smith (included in Defendant's Appendix) simply suggesting that, rather than adjudicate the recusal issue, a better alternative would be withdrawal of his Special Assignment status. Plaintiff's counsel was unaware of any restriction on such communication with Judge Barry-Smith on the specific recusal issue since he was not represented by counsel.

C. Rule 408 Communication

One of Attorney Dunbar's most egregious unfair tactics invoked in this litigation was his intentional submission of Plaintiff's Rule 408 settlement communication to the Court in order to seek an unfair

¹ The May 8, 2019 Order allowed Defendant to conduct depositions, issue document requests and interrogatories, and a deposition subpoena. On July 29, 2019, the Court referred to his Order as only requiring three depositions. On August 23, 2019, Judge Barry-Smith referred to his Order as only requiring two depositions. In his August 24, 2020 Order, Judge Barry-Smith stated that he had only ordered one deposition. No Order was ever issued amending the scope of the May 8, 2019 Order.

IV. C. 93A Claim v. Attorney Dunbar

Those who seek to impose c. 93A liability upon opposing counsel must establish that counsel engaged in a commercial relationship with the Plaintiff. Judge Barry-Smith relied upon the cases of First Enterprise v. Cooper, 425 Mass. 344 (1997) and Arthur D. Little, Inc. v. East Cambridge Savings Bank, 32 Mass. App. Ct. 734 (1994) to conclude that Attorney Dunbar's conduct did not satisfy these standards.

To conclude that c. 93A applies to Attorney Dunbar's conduct, numerous factors and circumstances must be found to exist, many of which are defined in Trenwick, supra. In this case, Attorney Dunbar's conduct, commencing in August 2017 and continuing through the present, satisfies not only the criteria in Trenwick, supra, but also the requirements defined in Shirokov v. Dunlap, Grubb and Weaver, (CA-10-12043-GAO (D) Mass. 2012) and St. Paul Fire and Marine Ins. Co. v. Ellis & Ellis, 262 F.3d 53 (1st Cir. 2001). These cases included actions by opposing counsel which evidence a "scheme" developed and undertaken which demonstrated a "veneer of legitimacy." Attorney Dunbar's "scheme" constitutes unfair and deceptive

practices based upon his representation which did not include defense of Plaintiff's claims but, rather, an effort to eliminate her sources of recovery. Scrutiny of Attorney Dunbar's actions commencing with the filing of the case in August 2017 reveals that his litigation tactics throughout the lawsuit satisfy the standard set forth in these respective cases.

Initially, at the outset of this case, Attorney Dunbar was engaged to represent Pelczar against a breach of contract claim for non-payment. He insisted that he would require substantial discovery to fulfill his obligations. In fact, in December 2017, Attorney Dunbar submitted an affidavit which stated:

"This case is only four months old. No discovery has been conducted in the case. The discovery deadline is June 4, 2018 ... I need discovery to determine, at the very least, (1) additional evidence of Trahan's material breaches of the Settlement Agreement which would relieve me of my obligations under the Settlement Agreement, (2) the intent of the parties regarding paragraph 23 of the Settlement Agreement regarding the loss of the \$100,000 discount on my obligation to Trahan, and (3) the reasonableness of Trahan's attorney's fees given that she has been wholly unsuccessful to date in court." (Pelczar Affidavit, paragraphs 7 and 8, December 13, 2017).

The deadline for discovery was June 4, 2018, approximately ten months after the commencement of the litigation. However, Attorney Dunbar failed to

propound any discovery until the deadline had passed. At that juncture, he noticed two depositions after declaring to Judge Donatelle in open court that a settlement proposal would be presented to Plaintiff. He subsequently alleged new genuine issues of material fact after his "disparagement" allegation was rejected by the Court. Nearly a year after the discovery deadline had passed, on March 5, 2019, he revealed his "new genuine issues of material fact" solely to convince Judge Barry-Smith to allow him to pursue a new series of discovery requests. During this entire time period, he enabled his client to eliminate the majority of funds available to satisfy Plaintiff's judgment and thereby achieve his sole purpose in discovery.

However, Attorney Dunbar then took further actions to eliminate Plaintiff's recovery by instituting the additional litigation in Essex Superior Court and the Land Court alleging that the promissory note funds were stand-alone obligations (SA 156, SA 163).

As in Shirokov, *supra*, the actions taken by Attorney Dunbar in this case are "more textured" than those which immunize counsel from c. 93A liability.

The Record shows that his involvement in this case was principally a "scheme" to defraud the Plaintiff. The Defendant never substantively denied her allegations of non-payment; rather, Attorney Dunbar utilized the discovery process to co-opt the order of May 8, 2018 in order to diminish the judgment funds.

This type of conduct was also found to constitute a 93A violation in Ellis & Ellis, *supra*, where litigation was utilized to dupe the Court into allowing counsel to eliminate assets available for recovery by the Plaintiff. In sum, the underlying facts in the Record of this case mirror those in both of the above cases.

Attorney Dunbar masterminded and perpetuated a four-year scheme to prevent Plaintiff from recovering the amounts which should have been available to her soon after the commencement of the litigation in 2017 in a judgment that required payment and future compliance with the terms of the Settlement Agreement.

V. Response to Defendant's Appeal

Defendant's appeal relies almost exclusively on allegations that Plaintiff's counsel unreasonably prolonged the litigation. Nearly every citation to the

CONCLUSION

At the scheduling conference on March 5, 2019, Judge Barry-Smith ruled that he was persuaded by Defendant's counsel that further discovery was needed to adjudicate his counterclaims. On May 8, 2019, the Lower Court issued a discovery order, the timing and scope of which ignored the applicable tracking order

deadline and the requirement that the Defendant show "good cause" to seek an extension of the June 4, 2018 deadline.

The economic hardship on the Plaintiff and her counsel has been severe and are the direct result of the additional discovery scheme which Attorney Dunbar has perpetuated for the majority of the past four years. When the discovery dispute was initiated, Judge Barry-Smith's only priority was to secure compliance with his order, rather than address the merits of the order itself. Notwithstanding the prejudicial discovery order and the piecemeal litigation invited by the Court, Attorney Dunbar initiated the process and "scheme" which extended this litigation for four years, rather than the few months it should have required.

This case began in August 2017 and there has never been any legitimate defense to Defendant's non-payment. However, by virtue of the extended discovery as well as the current litigation which has been filed in Essex Superior Court and in foreclosure proceedings, Plaintiff has been prevented for four years from receiving the amounts and the judgment she is owed. Plaintiff's counsel has been forced to

litigate on numerous fronts due to the purported "veneer of legitimacy" by Attorney Dunbar.

In February 2019, Judge Barry-Smith ruled that the Reach and Apply funds may well be the only source that Plaintiff might ever recover and Defendant's counterclaims were meritless. To date, the unrefuted facts from four years of litigation have proven those observations to be true.

Plaintiff respectfully requests that this Court impose c. 93A liability on Defendant and Attorney Dunbar whose "scheme" enabled Pelczar to ignore his settlement agreement obligations and fulfill only one promise he made in December, 2012 - that he would only pay Plaintiff two years. The plan that Attorney Dunbar devised and implemented allowed his client to keep that promise at Plaintiff's expense. They both should be held responsible for the damages owed to her as a result of their actions.

Respectfully submitted,
Plaintiff,
Kathleen Trahan,
By her Attorney,

Steven E. Kramer

STEVEN E. KRAMER
BBO #279080
58 Polaris Drive
Mashpee, MA 02649
774-254-0772
sekramer8@aol.com

Dated: September 10, 2021

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

SJC No. 13175

BARNSTABLE, ss.

MICHAEL J. BASSICHIS AND OTHERS,
PLAINTIFFS-APPELLANTS,

v.

MICHAEL I. FLORES,
DEFENDANT-APPELLEE,

v.

ON APPEAL FROM A JUDGMENT OF DISMISSAL
UNDER RULE 12(B)(6) IN THE
SUPERIOR COURT

BRIEF OF AMICUS CURIAE

STEVEN E. KRAMER,
BBO #279080
58 Polaris Drive
Mashpee, MA 02649
(774) 254-0772
sekramer8@aol.com

Dated: October 11, 2021

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I. Standing of Amicus Curiae Under Appellate Rule 17

The amicus curiae is Steven E. Kramer, Esq., counsel for Plaintiff Kathleen Trahan, in Trahan v. Pelczar, Appeals Court Docket No. 2021-P-0493. This brief is submitted in response to the solicitation for amicus briefs by the Supreme Judicial Court in Lawyers' Weekly on September 27, 2021.

Steven E. Kramer has never met, spoken or consulted with Plaintiffs or their counsel and has not received any compensation from any source for preparation of this brief. The submission is based solely upon his review of the docket entries and submissions in the pending case.

II. Concise Statement of Amicus Curiae

This case and Trahan, *supra*, require adjudication of the scope of the absolute litigation privilege. Such a determination requires review of the litigation tactics and actions taken by Defendants' counsel in the two matters. Defendant's counsel insists that the facts and circumstances of this matter warrant the protection of the litigation privilege for his "free speech" actions in transferring the divorce assets which prevented Plaintiffs' recovery. The lower court determined that counsel's "scheme" constituted "words

themselves" protected by the absolute litigation privilege and cited The Patriot Group LLC v. Edmands, 96 Mass. App. Ct. 478, 484 (2019) , Gillette Company v. Provost, 91 Mass. App. Ct. 132, 134 (2017) in support of its finding.

For reasons stated herein and in Plaintiff's appellate brief, the lower court erred by designating counsel's actions and litigation tactics as "words" protected by the litigation privilege. To the contrary, they were a scheme of asset transfers designed to transfer Defendant's assets solely to defraud his creditors and impede their recovery.

This amicus brief is submitted because similar litigation tactics were utilized by defense counsel in Trahan through a litigation discovery scheme. Trahan is a substantial creditor of the Defendant who owes her several hundred thousand dollars under the payment schedule terms of a Settlement Agreement entered by the parties in 2012. After the Defendant had defaulted on every payment obligation since 2015, including 25 separate defaults as of today, Trahan filed suit in 2017.

Counsel for Pelczar never contested the nonpayments but asserted counterclaims that

purportedly excused the nonpayments. He insisted from the outset that substantial discovery would be necessary to adjudicate the claims and counterclaims. At the same time that the Complaint was filed, Defendant entered into a divorce agreement with his ex-wife, the Reach and Apply Defendant, wherein he would receive \$13,184.64 per month from his ex-wife pursuant to a \$475,000 promissory note.

The lower court found that those payments would likely be the only funds available to satisfy the debt owed to Trahan. In order to ensure that his client received nearly all of the funds as opposed to Trahan, counsel for the Defendant devised a litigation discovery "scheme" to prevent her recovery. Despite his insistence from the outset that discovery was essential, he failed to propound any requests by the expiration of the tracking order discovery deadline. Instead, he initiated a "scheme" which began after the deadline following his assurance in open court that a settlement proposal would be presented forthwith to Trahan. Rather than present a proposal, he initiated his deposition and subpoena requests, followed nearly a year later with demands for more discovery in view of newly raised "genuine issues of material fact".

Throughout the time period, his client continued to receive nearly all of the monthly payments Trahan sought for security and thereby essentially eliminated Plaintiff's only opportunity to eventually satisfy the debts owed to her. Throughout the period, despite receiving the \$13,184.64 monthly payments, Defendant failed to pay any amounts that became due to Trahan.

In sum, counsel utilized discovery as an action weapon, not as words or speech. As a result, his intentional delay tactics, not speech, was invoked to pursue an illegitimate purpose of eliminating Trahan's opportunity to recover. The court ordered tracking order discovery deadline was totally ignored. The details are further described in Trahan's appellate brief on file. Nevertheless, similar to the instant case, counsel's tactics and intentional efforts to hinder and prevent Plaintiff's recovery are not either "words themselves" or "speech" which is protected by the absolute litigation privilege. Neither Patriot, *supra*, Gillette, *supra*, or the other case law referenced below and in counsel's appellate brief, provide that such a protection should be afforded to counsel who undertake such actions.

III. Argument

As counsel has stated in his appellate brief, "whether an absolute privilege qualifies ... is determined on a case-by-case basis, after a fact specific analysis." Patriot, *supra*, at 484. The person asserting the privilege bears the burden of establishing entitlement to the privilege. Mack v. Wells Fargo Bank, N.A., 88??? Mass. App. Ct. 664, 668 (2015).

The absolute litigation privilege, when properly invoked, provides counsel with the opportunity to speak freely without fear of retribution. However, counsel's actions in this case and in Trahan were not bona fide, carried out with a view to elicit the truth from a witness or otherwise legitimately advance his client's interest, Hoar v. Wood, 46 Mass. 193, 197 (1841). Counsel's probate scheme of transferring divorce assets did not encompass legitimate asset protection, advocacy or speech that deserves absolute litigation protection. Rather, the divorce proceeding actions were taken as part of an intentional scheme for a totally ulterior purpose. Counsel's participation in a sham divorce proceeding was solely intended to prevent creditors from obtaining amounts due to them, as opposed to providing speech or

advocacy on behalf of his client. Haverhill Stem LLC v. Jennings, 99 Mass. App. Ct. 626, 636 (2021).

There may often be a subtle distinction between advocacy and actions taken by counsel to protect their client's interest in litigation. The clear intent of counsel in this case, and Trahan, however, is not to lawfully advance the merits of a client's claim but, rather, to unlawfully utilize process to prejudice the interests of opposing parties. Asset protection, in appropriate contexts, may be a legitimate pursuit for counsel. However, when fraudulent means are utilized to secure such protection, resulting in prejudice to creditors, the absolute litigation privilege should not be permitted to be a vehicle or accessory to the process. In this matter and Trahan, zealous advocacy and "words themselves" cannot encompass ignoring discovery deadlines and arranging fraudulent divorce asset allocation. These were used to pursue ulterior motives, not the "truth seeking" purposes of counsel which the privilege is intended to provide.

Perhaps Plaintiff's most compelling argument is provided in the Court's decision of Harmon Law Offices v. Attorney General, 83 Mass. App. Ct. 830, 837, n.9 (2013). The court held that a law firm may be liable

under c. 93A if it engages in conduct beyond the function of "traditional representation" justified by the facts and circumstances of the case. Neither in this matter, nor in Trahan, did counsel engage in traditional representation by fraudulently utilizing the system for ulterior purposes in preventing Plaintiff and Trahan from recovering that which they are owed. Such actions are neither advocacy nor mere words as referenced by the lower court in this matter. Counsel's actions abused the system. They should be held accountable and prevented from invoking the absolute litigation privilege to indemnify them from the harm they inflicted.

Respectfully submitted,
Plaintiff,

By her Attorney,

Steven E. Kramer

STEVEN E. KRAMER
BBO #279080
58 Polaris Drive
Mashpee, MA 02649
774-254-0772
sekramer8@aol.com

DATED: October 11, 2021